

Commission of Inquiry
into the Investigation of
the Bombing of Air India
Flight 182



Commission d'enquête relative
aux mesures d'investigation prises
à la suite de l'attentat à la bombe
commis contre le vol 182 d'Air India

DOSSIER 2

TERRORISM, INTELLIGENCE AND LAW ENFORCEMENT – CANADA'S RESPONSE TO SIKH TERRORISM

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TERRORISM, INTELLIGENCE AND LAW ENFORCEMENT – CANADA’S RESPONSE TO SIKH TERRORISM

INTRODUCTION

This dossier summarizes information found in open and/or public source (unclassified) materials¹ and has been prepared to assist in identifying issues at the Commission’s hearings. It does not constitute conclusive evidence of the facts reported and parties are entitled to call evidence to the contrary. While the Commissioner can accept as conclusive or give weight to the findings of these other examinations,² any references in this dossier to the conclusions reached in sources reviewed are included for information and are not findings by the Commissioner. Evidence presented at the Commission’s hearings may or may not substantiate the conclusions reached in those other sources. The sources of this dossier are from public documents, consequently the reference to the Canadian Security Intelligence Service (CSIS) in greater detail than other organizations is simply a reflection of the contents of those documents and not reflective of any selectivity.

I. Investigation of Sikh Extremism --Pre-Air India Bombing

1. Collection of information regarding threats to Indian interests in Canada

a. CSIS investigation

Since 1974, CSIS’ predecessor (the former RCMP Security Service) had followed the evolution of the movement for the establishment of an independent Sikh state named Khalistan. But, the Security Service, as indicated by its Director General in 1981, did not consider Sikh activities in Canada to represent any threat to national security.³ On May 1, 1984, however, all area commands of the Security Service were briefed on Sikh extremism and warned that an outbreak of violence in Canada was possible.⁴

A full investigation of Sikh extremist groups in Canada was authorized by CSIS on August 17, 1984.⁵ In 1985, information was received in the US about a plot to assassinate an Indian Minister of State who would be receiving medical treatment in New Orleans. As the investigation progressed, another plot, this time to assassinate Rajiv Gandhi during his June 1985 visit, was uncovered.⁶

¹ In some instances, reference is made to journalistic writings where other open source material is not available. This should not be interpreted as an expression of opinion by Commission Counsel or the Commissioner with respect to the accuracy of the factual statements made by the authors.

² Terms of Reference, Order in Council, P.C. 2006-293, para. (a). See also, Commission of Inquiry into the Bombing of Air India Flight 182, Rules of Procedure and Practice, ss. 26 and 27.

³ Security Intelligence Review Committee, *CSIS Activities in Regard to the Destruction of Air India Flight 182 on June 23, 1985*, November 16, 1992, pp. 4-5 [hereafter the “SIRC Air India Report”].

⁴ *SIRC Air India Report*, p.8.

⁵ *SIRC Air India Report*, p.12.

⁶ *SIRC Air India Report*, p.19.

In its 1985-86 annual plan, most likely drafted before the Air India bombing, CSIS modified the priority list of targeted terrorism threats for resource allocation purposes to include Sikh extremism.⁷ According to SIRC, CSIS' investigation of the threat of Sikh extremism prior to the Air India bombing was conducted at a level of intensity appropriate to the perceived level of threat at the time in relation to other threats. The threat assessments provided by CSIS to the Government and the RCMP accurately reflected the information and intelligence possessed by CSIS.⁸ However, SIRC found that the personnel allocation to this investigation in the BC Region in the spring of 1985 may have been insufficient. In addition, the decision to allow one of the investigators assigned to investigate Sikh extremism to leave for vacation immediately before the Air India bombing,⁹ during the most critical time surrounding the anniversary of the Golden Temple attack and the visit of Rajiv Gandhi to the US, was unfortunate.¹⁰

Salim Jiwa claims that an internal memo dated February 9, 1989, from Russell Weaver Upton, who was a Coordinator in the CSIS Counter-Terrorism Branch, stated that CSIS did not have a "complete analysis of Sikh terrorist developments in Canada" prior to the Air India bombing and possessed a limited understanding in this area.¹¹ Jiwa further asserts that Upton also said that both CSIS' field resources and Headquarters' analytical expertise were limited and that they had very limited technical coverage and practically no reliable human source coverage.¹²

b. CSIS threat assessments

Between May and July 1984, the RCMP Security Service and then CSIS issued several threat assessments to the RCMP VIP Security Branch on Sikh demonstrations and on threats to Indian missions and personnel.¹³ According to SIRC, the assessments indicated a high level of threat but contained no specific information. Between the inception of CSIS on July 14, 1984 and June 1, 1985, 70 threat assessments were issued by CSIS to external agencies, mostly to the RCMP VIP Security Branch.¹⁴ SIRC found that the assessments continued to indicate a high level of threat¹⁵ but provided no specific information about the nature of the threat.¹⁶

On April 1, 1985, a comprehensive threat assessment update on Sikh extremism was issued.¹⁷ On May 16, 1985, CSIS issued a general threat assessment to the RCMP VIP Security Branch indicating that the threat level for Indian missions and personnel

⁷ *SIRC Air India Report*, p.32.

⁸ *SIRC Air India Report*, p.127.

⁹ See Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.66; Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.237.

¹⁰ *SIRC Air India Report*, p. 33 and pp. 35-36.

¹¹ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.237. It is not known from what source Mr. Jiwa obtained the memorandum from which he quotes.

¹² Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.237.

¹³ *SIRC AirIndia Report*, p.10.

¹⁴ *SIRC Air India Report*, p. 4 and p. 27.

¹⁵ *SIRC Air India Report*, p.12.

¹⁶ *SIRC Air India Report*, p.15.

¹⁷ *SIRC Air India Report*, p.16.

remained high.¹⁸ On May 24, 1985, CSIS issued a comprehensive threat assessment respecting the Gandhi visit and the anniversary of the assault on the Golden Temple.¹⁹ While updated and comprehensive assessments were provided on June 6, 18 and 19, 1985, SIRC found that no specific threat assessment respecting Air India Flight 182 was issued.²⁰

SIRC concluded that according to the documents and information it reviewed, CSIS had no information that could have allowed it to produce a specific threat assessment for the June 22nd Air India Flight 182.²¹ According to SIRC, the threat assessments produced by CSIS accurately reflected the raw information in its possession.²² However, SIRC found that the threat assessments lacked the specificity found in similar assessments produced at the time of the SIRC review and reflected weaknesses in the system of formal intelligence analysis in the BC Region and at CSIS Headquarters.²³

c. Warnings of threats produced by the Government of India and foreign agencies

In its review of CSIS activities in relation to Air India, SIRC found that the Department of External Affairs (DEA) received many warnings of possible terrorist actions against Indian interests in Canada prior to the bombing and shared this information with CSIS and the RCMP.²⁴ SIRC mentioned conflicting reports and warnings about: the possible violent reaction of Sikh extremists following the Indian assault on the Golden Temple in June 1984;²⁵ a report that a Sikh extremist organization had compiled a “hit” list of moderate Sikhs in Canada;²⁶ a request to take action against Surjan Singh Gill, the Khalistan “Consul General” in Vancouver, who was alleged to preach violence;²⁷ and numerous warnings in 1985 from the Government of India that Air India operations would be attacked or its aircraft hijacked.²⁸ The Government of India warnings respecting threats from Sikh extremists were initially directed to the RCMP and DEA.²⁹ DEA’s security intelligence bureau held consultations in mid-May 1985 with Canada’s mission in Delhi on the Sikh terrorist threat in Canada and India.³⁰

¹⁸ *SIRC Air India Report*, p.20.

¹⁹ *SIRC Air India Report*, p.18. See *Dossier 1: Background and Summary of the Facts*, p.1-2, for a description of the events surrounding the assault on the Golden Temple.

²⁰ *SIRC Air India Report*, p.28.

²¹ *SIRC Air India Report*, p. 28 and p. 35.

²² *SIRC Air India Report*, p.35.

²³ *SIRC Air India Report*, p.35.

²⁴ Rae, Bob. *Lessons to be Learned: The Report of the Honourable Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness, on Outstanding Questions with Respect to the Bombing of Air India Flight 182* (Ottawa: Air India Review Secretariat, 2005) p.6 [hereafter the “Rae Report”].

²⁵ *SIRC Air India Report*, p.8.

²⁶ *SIRC Air India Report*, p.10.

²⁷ *SIRC Air India Report*, p.101.

²⁸ *SIRC Air India Report*, p.28.

²⁹ *SIRC Air India Report*, p.36.

³⁰ *Rae Report*, p.6.

SIRC concluded that the warnings it examined were sufficient to warrant increased vigilance by security forces at certain locations, but not sufficiently detailed to enable CSIS to perform any useful short-term analysis.³¹

2. Physical surveillance of Talwinder Singh Parmar

Talwinder Singh Parmar was the leader of the Babbar Khalsa, a pro-Khalistan organization at the heart of radical extremism,³² and it is now believed that he was the leader of the conspiracy to bomb Air India flights.³³ He first came to public attention when a newspaper article dated January 8, 1982 reported that he was missing in India since his family had returned to Canada without him after a visit in 1981.³⁴ In 1982, surveillance began to be conducted on Parmar.³⁵ India requested his extradition in connection with the murder of two police officers in the Punjab in November 1981.³⁶ The Indian government described him as a dangerous and violent political activist.³⁷ According to journalist Zuhair Kashmeri, India was even prepared to offer the surrender of Kuldip Singh Samra, who was believed to be responsible for a 1982 Toronto courtroom shooting and who had fled to India, in exchange for the extradition of Parmar.³⁸ The extradition request was refused, but Parmar remained a person of interest to Canadian authorities.³⁹ The RCMP Security Service attempted to interview Parmar on December 1, 1982, but Parmar refused the interview.⁴⁰ On June 29, 1983, the RCMP Security Service learned that Parmar had been arrested in West Germany pursuant to an international warrant issued by the Indian government.⁴¹ German authorities refused to extradite Parmar and he returned to Canada on July 6, 1984.⁴²

After its creation in 1984, CSIS continued the Security Service's investigation of Parmar. CSIS investigators were aware that Parmar and his organization, the Babbar Khalsa, were competing with other extremist organizations and that Parmar was attempting to establish himself as the leading Sikh holy man.⁴³ They also learned that Parmar had contacts with other Babbar Khalsa members and extremists abroad.⁴⁴

³¹ *SIRC Air India Report*, p.36.

³² *Rae Report*, p.3.

³³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1256: all parties to the Air India trial acknowledged this.

³⁴ *SIRC Air India Report*, p.5.

³⁵ *Rae Report*, p.7.

³⁶ *SIRC Air India Report*, p.7.

³⁷ *Rae Report*, p.7.

³⁸ Kashmeri, Zuhair, and McAndrew, Brian. *Soft Target: How the Indian Intelligence Service Penetrated Canada*, 2nd ed. (Toronto: James Lorimer & Company, 2005) p.23.

³⁹ *Rae Report*, p.7.

⁴⁰ *Affidavit of Archie M. Barr*, in the matter of An Application for a warrant pursuant to Section 21 of the Canadian Security Intelligence Service Act, in *Crown Book of Documents on Section 7 Charter Application re: C.S.I.S. Erasure of Intercept Tapes*, Volume 1, Tab 1 (Air India Media Release CD, Volume 1, April 25, 2003) at para. 5 [hereafter the "CSIS Parmar Affidavit"].

⁴¹ *SIRC Air India Report*, p.6.

⁴² *SIRC Air India Report*, p.7.

⁴³ *SIRC Air India Report*, p.7.

⁴⁴ *SIRC Air India Report*, p.17.

According to the Rae Report, CSIS' physical surveillance of Parmar was intermittent in the months preceding the Air India bombing.⁴⁵ There was regular physical surveillance of Parmar by CSIS for 17 days in June 1985.⁴⁶ During the British Columbia criminal trial of Malik and Bagri (known as the "Air India trial"), CSIS surveillance reports were tendered by both the Crown – in order to establish contact between Parmar and the accused Ripudaman Malik and Ajaib Singh Bagri⁴⁷ – and the defence – in order to show suspicious contact between Parmar and others.⁴⁸

CSIS officers occasionally had difficulty identifying the suspects observed during surveillance. During the Air India trial, the Crown invoked instances of misidentification of suspects in some of the CSIS surveillance reports in its efforts to establish that an unidentified male who was seen entering the Parmar residence on June 21, 1985, was Bagri, in spite of an admission of fact to the contrary that had been based on a CSIS surveillance report indicating that the unidentified male was not Bagri.⁴⁹ The Crown pointed to the absence of factual underpinnings for the CSIS agent's opinion respecting the identity of the person entering the Parmar residence.⁵⁰ In other instances, there were questions about the accuracy of the times reported by CSIS surveillance for phone calls from payphones when compared to the BC Telephone Company records.⁵¹

3. Technical Surveillance of Talwinder Singh Parmar

a. Delays in CSIS' attempt to secure technical intercept

On March 8, 1985, CSIS obtained a warrant to intercept Parmar's telephone communications.⁵² Parmar's involvement with the Babbar Khalsa and the public threats he issued against the Government of India and Indian interests in Canada were listed as the main grounds to believe the interception was necessary to investigate a threat to national security.⁵³ The initial preparation of the warrant application was carried out in the fall of 1984, but because of issues related to the need to convert existing warrants under the CSIS Act, and because of concerns expressed by the Solicitor General, the application was withdrawn. It was only re-submitted in March 1985.⁵⁴ Actual interception of Parmar's communications began on March 27, 1985.⁵⁵

⁴⁵ *Rae Report*, p.16.

⁴⁶ *SIRC Air India Report*, pp. 26-27.

⁴⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 445 and 1159.

⁴⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1172.

⁴⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1145-46.

⁵⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1146. Josephson J. ruled, at para. 1237, that the Crown was bound by the admission respecting the identification of the individual.

⁵¹ *Affidavit of Gary Lamont CLARK-MARLOW*, in the matter of an Application pursuant to Part VI of the Criminal Code of Canada for an authorization to intercept private communication pursuant to section 186 of the Criminal Code of Canada, September 17, 1996, in *Applicant's Motion Record on Section 7 Charter Application, Volume IV, Tab 88* (Air India Media Release CD, Volume 2, May 30, 2003) at para. 169 [hereafter the "*Clark-Marlow Affidavit*"].

⁵² *SIRC Air India Report*, p.16.

⁵³ *CSIS Parmar Affidavit* at para 3.

⁵⁴ *SIRC Air India Report*, p.31 and p.73.

⁵⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1155.

b. Problems surrounding the translation of tapes

Because most of Parmar's conversations were carried on in Punjabi and the CSIS British Columbia Region initially had no in-house capability to translate the conversations, there were lengthy delays before the intercept tapes were processed and a large number of tapes remained unprocessed until several months after the Air India bombing.⁵⁶

The CSIS BC Region had been attempting to retain the services of a Punjabi translator since the preparation of the Parmar warrant application, but could not find a suitable candidate until June 6, 1985.⁵⁷ In the meantime, the BC Region agreed with the Ottawa Region that the tapes would be sent there on a regular basis for translation.⁵⁸ It was agreed that the Ottawa Region would paraphrase and report to the BC Region only information considered relevant by the Ottawa officials.⁵⁹ The notes of the translator were sent back to Vancouver.⁶⁰ Three calls considered important to officials in Ottawa were immediately made the subject of telexes and entered into the CSIS computerized system.⁶¹

On March 25, 1985, CSIS had assigned a transcriber to manage the product from the Parmar intercepts.⁶² The recorded calls were reviewed in Vancouver for English content and the tapes were then sent to Ottawa for translation.⁶³ The transcriber in charge was on leave between June 21 and 29, 1985.⁶⁴

The Ottawa translator reviewed only 33 of the 83 tapes sent to Ottawa between March 27 and April 26, 1985.⁶⁵ The remaining 50 tapes were stored in Ottawa and eventually returned to Vancouver in July 1985.⁶⁶ After April 26th, the Ottawa Region asked that no more tapes be sent, as they could not be processed immediately.⁶⁷ The last tape reviewed in Ottawa was dated April 9, 1985.⁶⁸

When the BC Region finally hired a Punjabi translator on June 6, 1985, there was a backlog in BC of approximately 80 to 82 tapes.⁶⁹ The translator was instructed to process current tapes and then work back in time in the backlog as time permitted.⁷⁰ In this

⁵⁶ *SIRC Air India Report*, p. 19 and p.67.

⁵⁷ *SIRC Air India Report*, p. 31 and 73.

⁵⁸ *SIRC Air India Report*, p. 73-74.

⁵⁹ *SIRC Air India Report*, p.74.

⁶⁰ *SIRC Air India Report*, p.31-32.

⁶¹ *SIRC Air India Report*, p.32.

⁶² *SIRC Air India Report*, p.33.

⁶³ *SIRC Air India Report*, p.31.

⁶⁴ *SIRC Air India Report*, p.34.

⁶⁵ *SIRC Air India Report*, p.74.

⁶⁶ *SIRC Air India Report*, p.76.

⁶⁷ *SIRC Air India Report*, p.74.

⁶⁸ *SIRC Air India Report*, p.74.

⁶⁹ *SIRC Air India Report*, pp. 74-75.

⁷⁰ *SIRC Air India Report*, pp. 74-75.

manner, she reviewed most of the May and early June tapes.⁷¹ SIRC noted that this time lag between recording and translation or transcription of intercepted communications was not unique to the processing of the Parmar tapes.⁷²

As of June 21, 1985, there remained a backlog of approximately 100 tapes.⁷³ At the end of September 1985, a backlog of 80 to 81 tapes containing tapes from April and early May 1985 remained. This was eliminated when a Punjabi-speaking RCMP officer and a CSIS Punjabi translator reviewed the tapes.⁷⁴ The CSIS translator reviewed approximately 30 tapes, while the RCMP constable reviewed the 50 tapes initially sent to Ottawa and returned in July 1985.⁷⁵

CSIS explained that it allowed a significant backlog of tapes to accumulate because tapes being produced currently were considered more of a priority.⁷⁶ This, according to SIRC, could be seen as reasonable in terms of acquiring current intelligence on Sikh extremism.⁷⁷

4. Formation of inter-departmental committee

On May 6, 1985, a senior level inter-departmental committee with representation from the RCMP, CSIS, DEA and the Solicitor General was established.⁷⁸ Its purpose was to address the risks associated with the anniversary of the Golden Temple attack and with the visit of Indian Prime Minister Rajiv Gandhi to the US and to review the protection given to Indian missions and personnel,⁷⁹ as well as to improve the tracking and sharing of information on Sikh terrorism activities in Canada.⁸⁰ The committee met a number of times prior to the Air India bombing.⁸¹

5. The Duncan Test Blast

On June 4, 1985, a CSIS surveillance team followed Parmar and another person when they went to the residence of Inderjit Singh Reyat.⁸² Reyat was convicted in 1991 for the manslaughter of the two Japanese baggage handlers in Narita and pleaded guilty in 2003 to the manslaughter of the Air India Flight 182 passengers and crew, admitting that he acquired various materials for the purpose of assisting others in making explosive

⁷¹ *SIRC Air India Report*, pp. 74-75.

⁷² *SIRC Air India Report*, pp. 85-86.

⁷³ *SIRC Air India Report*, p.75.

⁷⁴ *SIRC Air India Report*, p.76.

⁷⁵ *SIRC Air India Report*, p.76.

⁷⁶ *SIRC Air India Report*, p. 78-79.

⁷⁷ *SIRC Air India Report*, p.79. However, the Report goes on to state that “clearly, the tapes recorded prior to the events must be viewed as vitally important”.

⁷⁸ *SIRC Air India Report*, p.18. See also *Rae Report*, p.6, indicating that the committee was established on May 17, 1985.

⁷⁹ *SIRC Air India Report*, p.18.

⁸⁰ *Rae Report*, p.6.

⁸¹ *Rae Report*, p.6.

⁸² *SIRC Air India Report*, p.22. See *R. v. Malik and Bagri*, 2005 BCSC 350 at para.206 and 208.

devices.⁸³ The person accompanying Parmar when he visited Reyat was initially believed to be his son,⁸⁴ but evidence in the Air India trial established that Parmar was accompanied by an unknown East Indian male referred to as “Mr. X”.⁸⁵ Parmar, Reyat and Mr. X were observed driving to a remote area and standing outside the vehicle having a conversation.⁸⁶ Mr. X then got back into the vehicle and Parmar and Reyat took something from the trunk and went into a wooded area where a loud noise was heard.⁸⁷ Larry Lowe, the CSIS agent who heard the noise, believed it was a rifle shot or a shot fired “from some sort of gun”.⁸⁸ He unsuccessfully searched the area for a shell casing.⁸⁹ No photograph was taken when Parmar and Reyat went into the woods.⁹⁰ On the same day, CSIS agents observed Reyat’s vehicle drop off Parmar at the Nanaimo ferry terminal and later observed a man they believed to be Surjan Singh Gill pick up Parmar at the Horseshoe Bay ferry terminal.⁹¹ The two men drove to Parmar’s residence and were then observed engaged in conversation in a darkened garage.⁹²

The June 4th incident was reported to CSIS Headquarters on the following day and RCMP assistance was sought in identifying Reyat and making inquiries that confirmed he was the owner of a handgun.⁹³ The Rae Report concluded that there are “differing accounts” from the RCMP and CSIS with respect to the exchange of information between the two agencies relating to the surveillance of Parmar on June 4, 1985.⁹⁴ SIRC saw it as an example of good cooperation between the agencies.⁹⁵ SIRC found nothing in the CSIS files it reviewed which could indicate that CSIS realized the significance of the June 4th incident or undertook immediate analysis of it.⁹⁶

Following the Air India bombing, on June 28, 1985, the RCMP searched the area where the “loud report” was heard with an explosive-sniffing dog for over three hours and found nothing.⁹⁷ The RCMP searched the site again on July 2nd for a full day and finally found a blasting cap shunt and paper tape bundle wrapper in the area where Reyat’s car had been parked.⁹⁸ The site was again searched by the RCMP for a full day on July 4th and a second blasting cap shunt was found where Reyat’s car had been parked, but no

⁸³ See *Dossier 1: Background and Summary of the Facts* for an overview of the facts surrounding the two bombings.

⁸⁴ *SIRC Air India Report*, p.22. In its November 4, 1985 application for a search warrant, the RCMP, presumably relying on information obtained from CSIS, indicates that Parmar was accompanied by his son when he visited Reyat: *Information to Obtain a Search Warrant* at para. 23, appendix to *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731.

⁸⁵ See *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 212.

⁸⁶ *SIRC Air India Report*, p.22.

⁸⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 213. See also *SIRC Air India Report*, p.22.

⁸⁸ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 26.

⁸⁹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 26.

⁹⁰ *Rae Report*, p.8.

⁹¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 213-214.

⁹² *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 214.

⁹³ *SIRC Air India Report*, p.22.

⁹⁴ *Rae Report*, p.8.

⁹⁵ *SIRC Air India Report*, p.35.

⁹⁶ *SIRC Air India Report*, p.22.

⁹⁷ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 26.

⁹⁸ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 26.

explosion site was discovered in spite of extensive searches.⁹⁹ Reyat and Parmar were subsequently arrested on November 7, 1985,¹⁰⁰ following a search of their property. Reyat was charged with making an explosive substance and possession of a restricted weapon, and Parmar and Reyat were jointly charged with possession of an explosive substance following the June 4th test blast.¹⁰¹ Charges against Parmar were stayed and Reyat pleaded guilty to possession of an unregistered weapon and possession of an explosive substance.¹⁰² He was sentenced to pay a fine of \$2000.¹⁰³

6. RCMP and CSIS on heightened alert regarding Sikh extremism

In May 1985, the level of concern about possible violence relating to Sikh extremism increased significantly.¹⁰⁴ In a CSIS weekly bulletin dated May 6th, it was stated that Sikh extremist activities against the Indian government would increase in June because of the anniversary of the Golden Temple attack and the visit of Rajiv Gandhi to the US.¹⁰⁵ On May 28, 1985, CSIS Headquarters advised all regions of the high potential for serious incidents and instructed that the matter receive high priority.¹⁰⁶ SIRC found that CSIS was aware of a general feeling in the Sikh community that “something big was going to happen”.¹⁰⁷

On June 6, 1985, the RCMP requested an updated threat assessment on Air India from CSIS¹⁰⁸ after receiving correspondence from Air India about possible threats of sabotage of their aircraft.¹⁰⁹ On the same day CSIS replied that the general threat level to all Indian government interests, including the airline, remained high, but that it had no information on specific threats.¹¹⁰ On June 9, 1985, the RCMP was advised by one of its sources that members of a Hamilton Sikh temple had been told not to fly Air India as it would be unsafe to do so.¹¹¹

⁹⁹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 26.

¹⁰⁰ *R. v. Malik, Bagri and Reyat*, B.C.S.C. CC010287, Box 4, Exhibit 1, Tab 6 (Abuse of Process Application) on *Air India Media Release CD*, Volume 1, April 25, 2003 at para. 92-93 [hereinafter the *Extension of Wiretap Affidavit*].

¹⁰¹ *Information*, Provincial Court file 9569 in Box 4, Exhibit 1 (Abuse of Process Application), Tab 11, in the matter of *R. v. Malik, Bagri and Reyat*, CC010287 (Air India Media Release CD, Volume 1, April 25, 2003).

¹⁰² Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.172; Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.80; Kashmeri, Zuhair, and McAndrew, Biran. *Soft Target: India's Intelligence Service and Its Role in The Air India Disaster*, 2nd ed. (Toronto: James Lorimer & Company, 2005), p. 78.

¹⁰³ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.172.

¹⁰⁴ *SIRC Air India Report*, p.18.

¹⁰⁵ *SIRC Air India Report*, p.18.

¹⁰⁶ *SIRC Air India Report*, p.20.

¹⁰⁷ *SIRC Air India Report*, p.21.

¹⁰⁸ *SIRC Air India Report*, p.22.

¹⁰⁹ *Air India Investigation: SIRC Briefing (Draft)*, February 11, 1992, in *Applicant's Motion Record on Section 7 Charter Application, Volume IX, Tab 3* (Air India Media Release CD, Volume 2, May 30, 2003) at p. 6 [hereafter the “*Draft RCMP SIRC Briefing*”].

¹¹⁰ *SIRC Air India Report*, p.22.

¹¹¹ *Clark-Marlow Affidavit* at para. 212.

On June 12, 1985, RCMP investigators and members of the US Secret Service interviewed Parmar and his associate, Surjan Singh Gill.¹¹² The US Secret Service had received information that Sikh extremists were plotting the assassination of Indian Prime Minister Rajiv Gandhi during his visit to the US and they, along with the RCMP, wanted to find out about the intentions of the Babbar Khalsa with respect to Gandhi's US visit and to deter the Babbar Khalsa from attempting to assassinate Gandhi by showing them that the authorities were following the situation.¹¹³

7. Threat posed by Sikh extremism perceived to have diminished after June 16, 1985

After Gandhi's departure from the US on June 16, 1985, CSIS Regions disagreed about the assessment of the Sikh extremism threat. Some believed the risk was significantly lessened, though Indian missions continued to be at risk, while others were of the view that the threat level remained high.¹¹⁴ The RCMP asked for an updated threat assessment on June 17th, apparently assuming that the risk would be significantly reduced.¹¹⁵ DEA also requested a re-assessment of the level of security to be provided for Indian missions. Records of discussions in this respect, which were held on June 18, 1985 in the presence of CSIS and RCMP representatives, could not be found but a CSIS officer reported that DEA representatives were anxious to keep the level of security at the same or a higher level and that the RCMP agreed.¹¹⁶

On June 18, 1985, CSIS issued a comprehensive threat assessment noting that the threat was only slightly lessened now that the Gandhi visit and the anniversary of the assault on the Golden Temple had passed.¹¹⁷ No specific information about a threat to Air India was included. On June 19th, a threat assessment was also provided to the RCMP VIP Security Branch.¹¹⁸ On the same day, CSIS Headquarters cancelled its previous requirement for daily situation reports from the regions.¹¹⁹

8. Lack of physical surveillance on Talwinder Singh Parmar (June 17-22, 1985)

SIRC found that CSIS physical surveillance of Parmar was discontinued between June 17 and June 22, 1985.¹²⁰ However, the Air India trial evidence revealed that some observations were made on June 18 and 21, 1985.¹²¹ Further, Salim Jiwa indicates that on June 19, 1985, CSIS surveillance observed Parmar leaving his home and driving in the

¹¹² *Clark-Marlow Affidavit* at para. 225.

¹¹³ *Clark-Marlow Affidavit* at para. 225.

¹¹⁴ *SIRC Air India Report*, p.24.

¹¹⁵ *SIRC Air India Report*, p.24.

¹¹⁶ *SIRC Air India Report*, pp. 24-25.

¹¹⁷ *SIRC Air India Report*, p.25.

¹¹⁸ *SIRC Air India Report*, p.25.

¹¹⁹ *SIRC Air India Report*, p.25.

¹²⁰ *SIRC Air India Report*, pp. 26-27. See also *Rae Report*, p.16, where it is stated that there was no surveillance "on the days immediately before the bombing".

¹²¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 445 and 1145-46.

general direction of Hardial Singh Johal's house.¹²² This departure occurred after a suspicious telephone conversation that immediately followed the initial reservation for the Air India tickets. In the absence of mobile surveillance, it was not possible to know where Parmar actually went.

No record was kept in the BC Region respecting the decision to remove surveillance and its possible connection to the end of Gandhi's visit to the US on June 16, 1985.¹²³ In light of the observations of Parmar made by CSIS after June 16th, it seems that surveillance was not entirely discontinued, though mobile surveillance was apparently no longer conducted. SIRC was unable to establish whether continued or more extensive physical surveillance after June 16th would have enabled CSIS to obtain vital information in order to prevent the Air India bombing.¹²⁴ SIRC concluded that the routine operational decision that resulted in the removal of physical surveillance of Parmar was reasonable, though unfortunate.¹²⁵

II. RCMP and CSIS investigation of the bombing of Air India Flight 182¹²⁶

1. RCMP and CSIS staffing of the investigation

At the operational level, there was an immediate response in the CSIS BC Region to the Air India bombing.¹²⁷ A 13-officer task force was established and a CSIS employee was appointed as liaison with the RCMP task force.¹²⁸ CSIS embarked on an extensive program of interviews with members of the Sikh community in British Columbia in order to obtain information.¹²⁹ The budget initially planned by CSIS for investigation of Sikh extremism in 1985-86 was exceeded and the new budget plan for 1986-87 reflected more accurately the current needs for the investigation of Sikh extremism.¹³⁰

On the RCMP side, task forces were set up in Ottawa, Montreal, Toronto and Vancouver in the days following the Air India crash.¹³¹ More than 200 investigators and support staff were deployed to the Air India investigation.¹³² In 1995, after delays in getting approval, a \$1million reward was announced for information leading to arrests.¹³³

¹²² Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006), p.234.

¹²³ *SIRC Air India Report*, p.34.

¹²⁴ *SIRC Air India Report*, p.27.

¹²⁵ *SIRC Air India Report*, p.36.

¹²⁶ For an overview of the known facts surrounding the bombing of Air India Flight 182, see *Dossier I: Background and Summary of the Facts*.

¹²⁷ *SIRC Air India Report*, p.42.

¹²⁸ *SIRC Air India Report*, p.42.

¹²⁹ *SIRC Air India Report*, p.42.

¹³⁰ *SIRC Air India Report*, p.43.

¹³¹ *SIRC Air India Report*, p.63.

¹³² *Rae Report*, p.14.

¹³³ *Rae Report*, p.14. See also Jiwa, Salim. *Margin of Terror* (Toronto: Key Porter Books, 2006) pp. 242-43.

2. Cooperation and coordination between CSIS and the RCMP

a. CSIS management cooperation and directions to CSIS officials

Shortly after the Air India bombing, on June 24, 1985, CSIS Headquarters transmitted a memo analysing the historical development of Sikh extremism and the current situation in Canada to the RCMP and to all CSIS Regions and overseas liaison officers.¹³⁴ On June 28, 1985, a CSIS representative indicated in an interdepartmental meeting hosted by DEA that CSIS assumed the Air India crash was caused by a bomb and that any elements which might constitute evidence respecting the Air India bombing had to be carefully handled in order to preserve their usefulness.¹³⁵ During the early stages of the Air India investigation, there were regular and frequent interdepartmental meetings attended by CSIS that were apparently meant to provide status reports to the Prime Minister and Cabinet Ministers.¹³⁶ In early July 1985, CSIS appointed one of its employees as a full-time liaison officer to the RCMP Headquarters Task Force and an important amount of information was subsequently exchanged through this officer.¹³⁷

According to SIRC, it was reasonable to expect that intelligence which tended to establish the identity or guilt of the perpetrators of a security offence¹³⁸ or to assist in the police investigation of the offence should generally be provided to the RCMP under section 19(2) of the CSIS Act.¹³⁹ At the time of the Air India bombing, a Memorandum of Understanding (MOU) governing the transfer of information between CSIS and the RCMP had been in effect since July 1984. A Ministerial Directive from the Solicitor General issued on July 29, 1984 also set out guidelines respecting CSIS and RCMP coordination in the investigation of national security matters.¹⁴⁰ Generally, the RCMP was expected to rely on CSIS to obtain intelligence respecting security offences and the two agencies were to consult and cooperate in security investigations.¹⁴¹

One year after the creation of CSIS, operational policies had not been developed within CSIS to implement the MOU and the Directive.¹⁴² Shortly after the Air India bombing, a message from CSIS Headquarters to the Regions announced that CSIS would be conducting an enhanced investigation with respect to Sikh extremism and the Air India bombing and asked the Regions how they would connect with the police investigation of these matters.¹⁴³ Headquarters provided no guidance or instructions on the conduct of the enhanced investigation or on the policies that applied in establishing investigative

¹³⁴ *SIRC Air India Report*, p.39.

¹³⁵ *SIRC Air India Report*, p.41.

¹³⁶ *SIRC Air India Report*, p.41.

¹³⁷ *SIRC Air India Report*, p.44.

¹³⁸ A security offence is one which arises from activities which constitute a threat to the security of Canada: see *Security Offences Act*, R.S.C. 1985, c. S-7, s. 2. The Air India bombing was assessed to constitute such an offence: *SIRC Air India Report*, p.37.

¹³⁹ *SIRC Air India Report*, p.38.

¹⁴⁰ *SIRC Air India Report*, p.38.

¹⁴¹ See *Rae Report*, p.12-13.

¹⁴² *SIRC Air India Report*, p.38.

¹⁴³ *SIRC Air India Report*, p.41.

relationships with the RCMP in this or any other communications in the days following the bombing.¹⁴⁴ No reference was made to the existing MOU between CSIS and the RCMP.

Though Headquarters did receive daily situation reports from the Regions detailing extensive cooperation with the RCMP,¹⁴⁵ SIRC was unable to find any document suggesting that RCMP and CSIS senior management had any meetings in the early days after the Air India bombing to discuss cooperation and liaison during the investigation.¹⁴⁶ One of the only instructions emanating from upper level CSIS management was a memo from the CSIS Deputy Director, Requirements, to the Director General, Counter-Terrorism dated July 2, 1985 that provided guidance respecting the formal liaison arrangement to be entered into with the RCMP at the invitation of the RCMP Headquarters Task Force.¹⁴⁷

SIRC found no evidence from the minutes of the CSIS Executive Committee meetings that in the months following the Air India bombing the Air India investigation and the subsequent problems between CSIS and RCMP officers were discussed or addressed.¹⁴⁸ According to SIRC, there was no recorded policy direction from CSIS Director T. D. “Ted” Finn respecting the sharing of information with the RCMP or the allocation of investigative responsibility between CSIS and the RCMP.¹⁴⁹ Instructions issued by CSIS Headquarters did reflect a concern that CSIS was encroaching on the RCMP area of responsibility with respect to the criminal investigation and, conversely, that the RCMP was encroaching on a CSIS area of responsibility by investigating Sikh extremist matters unconnected to the Air India investigation.¹⁵⁰

During the 1991-92 SIRC review, former CSIS Director Finn indicated that he felt that he was kept fully informed of the investigation respecting the Air India bombing and any problems that arose.¹⁵¹ He did not keep notes of his oral instructions to his senior managers, but was confident that his instructions would be followed. According to SIRC, the CSIS Director’s lack of personal involvement was to be expected in the context of the day-to-day management of CSIS operations.¹⁵² However, SIRC found his lack of direction on the more fundamental issues of the definition of the CSIS mandate and the division of responsibility with the RCMP to be surprising in a case of this magnitude.¹⁵³ This could in part be explained by findings of the Osbaldeston Task Force that CSIS had a formal, hierarchical decision-making process that isolated the Director.¹⁵⁴

¹⁴⁴ *SIRC Air India Report*, p.41.

¹⁴⁵ *SIRC Air India Report*, p.43.

¹⁴⁶ *SIRC Air India Report*, pp. 41-42.

¹⁴⁷ *SIRC Air India Report*, p.44.

¹⁴⁸ *SIRC Air India Report*, p.56.

¹⁴⁹ *SIRC Air India Report*, p.56.

¹⁵⁰ *SIRC Air India Report*, p.56. The Report provides no details about the nature of the Headquarters instructions.

¹⁵¹ *SIRC Air India Report*, p.57.

¹⁵² *SIRC Air India Report*, p.56.

¹⁵³ *SIRC Air India Report*, p.56.

¹⁵⁴ Independent Advisory Team in the Canadian Security Intelligence Service. *People and Process in Transition: Report to the Solicitor General by the Independent Advisory Team in the Canadian Security*

In 1992, the former CSIS Deputy Director, National Requirements, indicated that emerging problems respecting the role of CSIS and the relationship with the RCMP were discussed with the RCMP during the early months and years of the Air India investigation at the Director and Deputy Director level and that oral instructions were issued to the operational branches.¹⁵⁵ The concern that some CSIS investigators might be inclined to take on criminal investigation responsibilities was apparently addressed in instructions to the BC Region.¹⁵⁶ The Director General, Counter-Terrorism indicated that he discussed the issue of the division of responsibility with the RCMP with the Director General of the BC Region.¹⁵⁷ According to him, the distinctions were well understood at the senior levels, but there was concern that at the operational level a sense of rivalry with the RCMP was developing, and that this might prompt CSIS investigators to revert to their former training and pursue a criminal investigation.

On January 28, 1987, the Solicitor General of Canada wrote to the Director of CSIS indicating that the Air India investigation was a matter of the highest priority and that “it is essential that both C.S.I.S. and the RCMP commence action now to coordinate the preparation of evidence which would be used for court purposes in the event of criminal prosecutions in the case”.¹⁵⁸ Director Finn replied by indicating that he had directed that “the full cooperation of the Service be placed at the disposal of the RCMP” and that all information that may be relevant be “made available to the RCMP to assist in its investigation”.¹⁵⁹ In 2002, during the pre-trial process for the Air India prosecution, Justice Ian Josephson found that this correspondence constituted evidence of an “access agreement between C.S.I.S. and the R.C.M.P.” and that as a result it was clear that the RCMP had unfettered access to all information relevant to the Air India investigation that was in CSIS files.¹⁶⁰ The Crown apparently conceded this point at the hearing.¹⁶¹

SIRC concluded that when the Air India investigation began, CSIS lacked adequate policies and guidelines about its mandate and role in relation to RCMP security offences investigations and that senior management did not provide immediate guidance.¹⁶²

Intelligence Service. Ed. Gordon F. Osbaldeston, Canadian Security Intelligence Service. (Ottawa: Solicitor General Canada, 1987) p. 11 [hereafter the “*Osbaldeston Report*”]; *SIRC Air India Report*, pp. 56-57.

¹⁵⁵ *SIRC Air India Report*, p.57. No documents were found, however, to support the Deputy Director’s assertions.

¹⁵⁶ *SIRC Air India Report*, p.57.

¹⁵⁷ *SIRC Air India Report*, p.57.

¹⁵⁸ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 16.

¹⁵⁹ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 16.

¹⁶⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 at para. 10. SIRC indicated that the daily reports submitted by the CSIS Regions to Headquarters pointed to a high degree of cooperation between CSIS and the RCMP, with an unrestricted sharing of information and requests for assistance on both sides: *SIRC Air India Report*, p.43.

¹⁶¹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 at para. 10.

¹⁶² *SIRC Air India Report*, p.127.

b. CSIS officials' knowledge of policies regarding cooperation with the RCMP

According to SIRC, at the time of the Air India bombing, the distinction between the RCMP and CSIS was still unclear to many of those involved.¹⁶³ Because CSIS had not developed operational policies with respect to the MOU and Ministerial Directive, the respective roles and responsibilities of the two agencies were unlikely to have been understood by all CSIS personnel.¹⁶⁴

While CSIS Director Finn was of the view that all CSIS employees properly understood the CSIS mandate, his successor, Reid Morden, expressed concerns in a letter to the Solicitor General in October 1987, stating that there were “indications that CSIS employees at all levels lack a comprehensive knowledge of the Service’s mandate and a corporate vision of our role within the Canadian security intelligence community”.¹⁶⁵

c. Operational Cooperation

SIRC found that the operational response to the Air India bombing by the CSIS Regions included extensive cooperation with the RCMP with respect to information exchange, coordinated physical and technical surveillance, and investigative assistance.¹⁶⁶ Shortly after the bombing, the CSIS BC Region Director General, Randil Claxton, met with RCMP representatives and promised the full cooperation of CSIS with the RCMP investigation.¹⁶⁷ Consultation took place with the RCMP.¹⁶⁸ On June 28, 1985, the BC Region reported that a CSIS employee had been appointed as full time liaison with the Vancouver RCMP Air Disaster Task Force.¹⁶⁹ RCMP Inspector John Hoadley, then Task Force commander, was also assigned to fulfill a liaison function with CSIS in order to ensure an ongoing flow of information.¹⁷⁰ The CSIS task force was to participate in and respond to the RCMP task force and all intelligence gathered would be routed through the liaison officer. Other CSIS Regions, in particular Montreal and Toronto, reported similar liaison and investigative assistance activities conducted with the RCMP.¹⁷¹

SIRC indicated that the RCMP and CSIS worked together on the surveillance of suspects in Vancouver and that the RCMP kept CSIS informed of the identity of its surveillance targets and also informed CSIS when they were approached by a witness who claimed

¹⁶³ *SIRC Air India Report*, p.38.

¹⁶⁴ *SIRC Air India Report*, p.64.

¹⁶⁵ *SIRC Air India Report*, p.57.

¹⁶⁶ *SIRC Air India Report*, p. 42 and p. 44.

¹⁶⁷ *Transcript of Proceedings at Trial* (testimony of Randil Bruce Claxton), in the matter of *R. v. Bagri, Malik and Reyat*, BC SC # CC010297 [hereinafter the “*Claxton Transcript*”], April 30, 2002, p.24.

¹⁶⁸ *SIRC Air India Report*, p.42.

¹⁶⁹ *SIRC Air India Report*, p.41. See also *Notebook Index – Narita/Air India – S/Sgt. R.L. Wall*, in *R. v. Malik, Bagri and Reyat*, B.C.S.C. CC010287, Box 1, Exhibit 30 (Reyat Search Warrant Voir Dire) on *Air India Media Release CD*, Volume 1, April 25, 2003 [hereinafter the “*Wall Notebook Index*”], p.1, indicating on June 26, 1985, that a CSIS Liaison would be assigned to work out of the task force.

¹⁷⁰ *Wall Notebook Index*, p.1, 85-06-26 entry. Sergeant Roth was also designated as CSIS information coordinator: 85-06-27.

¹⁷¹ *SIRC Air India Report*, p.43.

that Inderjit Singh Reyat had attempted to obtain explosives from him prior to the bombing.¹⁷² A CSIS representative was invited to a national RCMP meeting about the Air India investigation on July 10, 1985 and he gave a presentation on Sikh extremism.¹⁷³ He was not invited to participate in the remainder of the meeting, however, but two days earlier, the RCMP did provide CSIS with its investigation situation reports and two comprehensive reports which were said to contain all the information in the possession of the RCMP at the time.¹⁷⁴ A CSIS employee also shared information with RCMP personnel about the Sikh culture and aspirations in briefing sessions.¹⁷⁵ SIRC found that a post-crash analysis prepared by a CSIS investigator was communicated to the RCMP in the months following the bombing.¹⁷⁶ The leader of the CSIS BC Region task force indicated that there was frequent telephone contact with the RCMP and that any information believed helpful to the RCMP investigation was passed on both orally and in the reports transmitted on a daily basis.¹⁷⁷

SIRC noted that throughout the latter part of 1985, the RCMP continued to provide CSIS with updated investigation status reports, including a report for the period between October 12 and November 15, 1985 providing details of the searches of the Parmar and Reyat residences and of interviews and interrogations.¹⁷⁸ The CSIS BC Region had already received a complete report of the searches directly from the RCMP E Division Headquarters in Vancouver.¹⁷⁹

An RCMP affidavit in support of an application for authorization to intercept private communications states that on April 30, 1996, CSIS informed the RCMP that between July 1, 1985 and April 30, 1996, it had obtained authorizations to intercept the private communications of a number of individuals, including Parmar and Air India suspects Ajaib Singh Bagri and Ripudaman Singh Malik,¹⁸⁰ and that 200,000 tapes were retained and reviewed by CSIS transcribers and translators.¹⁸¹ The RCMP indicated that it reviewed the notes of transcribers and translators in order to ascertain whether the intercepts contained information that could exonerate the suspects.¹⁸²

d. Friction or miscommunication between CSIS and the RCMP

According to the Rae Report, there were conflicting views about the extent of the investigation conducted separately by CSIS in the days following the Air India crash and about the degree of cooperation between CSIS and the RCMP at the time.¹⁸³

¹⁷² *SIRC Air India Report*, p.45.

¹⁷³ *SIRC Air India Report*, p.45.

¹⁷⁴ *SIRC Air India Report*, p. 45.

¹⁷⁵ *SIRC Air India Report*, pp. 45-46.

¹⁷⁶ *SIRC Air India Report*, p.52.

¹⁷⁷ *SIRC Air India Report*, p.53.

¹⁷⁸ *SIRC Air India Report*, p.58.

¹⁷⁹ *SIRC Air India Report*, p.58.

¹⁸⁰ *Clark-Marlow Affidavit* at para. 12.

¹⁸¹ *Clark-Marlow Affidavit* at para. 12.

¹⁸² *Clark-Marlow Affidavit* at para. 13.

¹⁸³ *Rae Report*, p.16.

In July 1985, a dispute arose between CSIS and RCMP senior officers when a communication intended for CSIS Headquarters was mistakenly sent to the RCMP Chief Superintendent in charge of the Air India task force on July 22, 1985.¹⁸⁴ Chief Superintendent Belanger was concerned about the information in the message because he felt that what he perceived to be the intended CSIS actions were unacceptable and that the RCMP could not relay information to CSIS, for example about the identity of the Air India suspects, if CSIS was to use it for this unacceptable purpose.¹⁸⁵ Also, he felt that some of CSIS' investigative activities respecting Air India, such as analysis of flight records and other data, were activities relating solely to the criminal investigation for which the RCMP was exclusively responsible.¹⁸⁶ He immediately wrote to CSIS Headquarters to express his concerns. From its review of the initial message mistakenly transmitted to Chief Superintendent Belanger, SIRC concluded that had the course of action discussed in the message been undertaken, it would have been quite unacceptable and illegal in Canada, but that the message was simply mentioning a request for communication of information without necessarily expressing an intention on CSIS' part to follow up on the request.¹⁸⁷ SIRC also indicated that the message did contain references to other CSIS activities that could be interpreted by Belanger as falling exclusively within the limits of the RCMP mandate to conduct the criminal investigation.¹⁸⁸

CSIS Deputy Director, National Requirements, Archie Barr, wrote a response to Chief Superintendent Belanger's message on July 23, 1985.¹⁸⁹ Barr essentially indicated that CSIS was fully aware of the nature and extent of its mandate and did not welcome unsolicited advice about how it should be carried out. He questioned Belanger's authority for reviewing the initial CSIS message and stressed the fact that the Air India bombing did raise issues of national security that made it relevant to CSIS' mandate. He did indicate that CSIS would continue to share relevant information and intelligence that pertained to the RCMP criminal investigation, as Barr claimed was done from the beginning. He emphasized, however, that the tone of Belanger's message and what was perceived as his unwarranted attacks on the ability and integrity of CSIS were detrimental to the spirit of cooperation between the agencies.

According to SIRC, Barr's communication was evidence that a very serious conflict had arisen between senior managers in the two organizations.¹⁹⁰ Some CSIS employees interviewed by SIRC suggested that a personality conflict between Belanger and Barr

¹⁸⁴ *SIRC Air India Report*, p.47. The two agencies still shared communication facilities in Ottawa where CSIS elements were co-located with the RCMP.

¹⁸⁵ *SIRC Air India Report*, pp. 47-49. Belanger's concerns can be understood from a review of portions of the message he transmitted to CSIS. It is not possible to know what actions were contemplated by CSIS, but they apparently related to a suggestion to communicate information obtained in the investigation to another organization or individual..

¹⁸⁶ *SIRC Air India Report*, pp. 47-49.

¹⁸⁷ *SIRC Air India Report*, pp. 48-49.

¹⁸⁸ *SIRC Air India Report*, p.49.

¹⁸⁹ See *SIRC Air India Report*, p.49-50.

¹⁹⁰ *SIRC Air India Report*, p.50.

might have been at the root of the acrimonious exchange.¹⁹¹ SIRC did not find any significant subsequent reference to the exchange and found from the situation reports and other messages between July and September 1985 that at the operational level, cooperation between CSIS and RCMP remained high.¹⁹²

It appears that while CSIS considered the cooperation level high at the operational level, the RCMP had a different perspective, especially in light of the CSIS restrictions on the use of their information for any purpose other than to develop investigative leads.¹⁹³ On August 27, 1985, Staff Sergeant Wall expressed concerns about the “back and forth” with CSIS as the RCMP attempted to obtain information, and mentioned the “considerable lack of CSIS info” including information relating to intercepts.¹⁹⁴ CSIS’ position was that its intelligence and information should not be used by the RCMP in any way that could compromise the security of its sources or reveal its targets or methods of operation, while the RCMP was of the view that some of the CSIS information should be used to obtain *Criminal Code* warrants and to serve as evidence in any upcoming prosecution. The RCMP believed that CSIS restrictions on the use of its information put them in a position of possessing knowledge of criminal activities, yet being unable to use it to fulfil their mandate.¹⁹⁵ Problems also arose when the RCMP requested “hands-on” access to CSIS material for analysis for criminal intelligence and evidence gathering purposes.¹⁹⁶

SIRC found evidence of the frustration of at least one RCMP investigator with CSIS’ position about the use of its information in an affidavit submitted by the RCMP on September 19, 1985, in order to obtain a warrant to intercept communications of Parmar, Reyat and others.¹⁹⁷ The affidavit mentioned delays and refusals in passing on information¹⁹⁸ and provided details about: the fact that CSIS was intercepting Parmar’s communications; the number of tapes in CSIS’ possession; the fact that only a portion of the tapes were translated; and that those tapes were only paraphrased rather than fully transcribed.¹⁹⁹ The affidavit also mentioned that CSIS refused to provide the RCMP with copies of the actual Parmar tapes and sought to determine on its own what materials were relevant, allowing RCMP officers to make notes following their reading of the translator notes, but not to receive a copy of the translator notes.²⁰⁰ The affidavit also provided

¹⁹¹ *SIRC Air India Report*, p.50.

¹⁹² *SIRC Air India Report*, pp. 50-52.

¹⁹³ *SIRC Air India Report*, p.53. However, in its draft briefing to SIRC, the RCMP indicated that “the Force has always considered our cooperation with CSIS to be good, both before and after the June 1985 Air India crash. It would be wrong, however, to conclude that difficulties in our relationship were not experienced”: *Draft RCMP SIRC Briefing*, p.2.

¹⁹⁴ *Wall Notebook Index*, p.11, 85-08-27.

¹⁹⁵ See extracts of 1992 RCMP briefing to SIRC: *SIRC Air India Report*, p.63-64.

¹⁹⁶ *SIRC Air India Report*, pp. 63-64.

¹⁹⁷ *SIRC Air India Report*, pp. 53-55.

¹⁹⁸ *SIRC Air India Report*, p.55.

¹⁹⁹ *Affidavit, In the Matter of an Application pursuant to Section 178.12 of the Criminal Code of Canada for an Authorization to Intercept Private Communications pursuant to Section 178.13 of the Criminal Code of Canada*, September 19, 1985, in *R. v. Malik, Bagri and Reyat*, B.C.S.C. CC010287, Box 4, Exhibit 1 (Abuse of Process Application), Tab 5, on *Air India Media Release CD*, Volume 1, April 25, 2003 at para. 44-46 and 51 [hereinafter the “September 19, 1985 Affidavit”].

²⁰⁰ *September 19, 1985 Affidavit* at para. 48 and 51.

details about statements made by CSIS BC Region Director General Claxton to the RCMP respecting the scope and aims of the current CSIS investigation into Sikh extremism, as well as about Claxton's refusal to inform the RCMP of the names of the persons whose communications CSIS was currently intercepting.²⁰¹

SIRC indicates that lengthy negotiations between CSIS and the RCMP took place at the end of 1985.²⁰² Formal authorization to use CSIS information respecting the Duncan test blast in search warrant applications was requested by the RCMP in October 1985.²⁰³ On November 1, 1985, the RCMP formally sought permission to use the CSIS Parmar intercepts and surveillance reports in search warrant applications.²⁰⁴ An agreement was finally reached which allowed the RCMP to use CSIS information in affidavits to obtain warrants and to access CSIS files for analysis purposes.²⁰⁵ In December 1985, CSIS agreed to the use of a Parmar surveillance report in a prosecution of Reyat and Parmar that was to proceed in 1986.²⁰⁶

In an application dated November 4, 1985, for a warrant to search property belonging to Reyat, Parmar and others, the RCMP used information originating from CSIS reports about the content of the Parmar intercepts and from CSIS surveillance of Parmar on June 4, 1985.²⁰⁷ All information obtained from CSIS electronic or physical surveillance was referred to as information coming from "a source of known reliability, whose identity for security reasons I do not wish to reveal at this time".²⁰⁸ This happened because CSIS, having initially refused to permit its information to be used for obtaining search warrants, finally allowed its use on the condition that CSIS not be identified as the source.²⁰⁹ In 2002, Reyat challenged the warrant application, arguing that the RCMP deliberately misled the Justice of the Peace with respect to the source and the nature of some of the information listed in support for the warrant application.²¹⁰ Justice Josephson found that the Justice of the Peace was not misled or deceived, because the reason for concealing the source was disclosed and the formulation distinguished the source from human sources referred to individually as "a confidential informant".²¹¹ He concluded that mentioning the nature of the source, wiretaps, would have led to identifying CSIS.²¹² He found that he could not assess the reasonableness of CSIS' insistence on concealing its involvement,

²⁰¹ *September 19, 1985 Affidavit* at para. 70-71.

²⁰² *SIRC Air India Report*, pp. 63-64.

²⁰³ *Wall Notebook Index*, p.15, 85-10-15.

²⁰⁴ *SIRC Air India Report*, pp. 60-61. See also *Wall Notebook Index*, p.16, 85-10-30, indicating that specific information for RCMP warrants was requested from CSIS via Ottawa.

²⁰⁵ *SIRC Air India Report*, pp. 63-64.

²⁰⁶ *SIRC Air India Report*, p.61.

²⁰⁷ See *Information to Obtain a Search Warrant*, appendix to *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731.

²⁰⁸ *Information to Obtain a Search Warrant*, appendix to *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 23, 46, 48 and 53.

²⁰⁹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 64-65. Draft versions of the paragraphs of the Information to Obtain referring to CSIS information had to be sent to Ottawa for approval prior to the warrant application.

²¹⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 66.

²¹¹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 68 and 69.

²¹² *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 70.

but that the RCMP was “at the mercy of CSIS” in this matter and had “little choice” but to accept the CSIS conditions and therefore the RCMP committed no deliberate deception of the Justice of the Peace.²¹³ Justice Josephson further noted that “the use of language obscuring the involvement of C.S.I.S.” was “unprecedented, unique and unlikely to re-occur”.²¹⁴ He was of the view that in 1985, CSIS was a new organization and the interrelationship between the RCMP and CSIS was undefined, this being the source of confusion in the Air India investigation.²¹⁵

CSIS has indicated that prior to the November warrant application, the RCMP had actually proceeded to use CSIS information without obtaining CSIS’ consent.²¹⁶ In particular, it was noted in an October 1987 letter from the CSIS Director to the Solicitor General that a Parmar surveillance report was used in the September 19, 1985 RCMP affidavit without any advance warning to CSIS.²¹⁷ SIRC found no reason to dispute this allegation on the basis of the documentation it reviewed.²¹⁸ The September 19, 1985 RCMP affidavit did contain detailed references to the content of Parmar conversations intercepted by CSIS between April 8 and June 22, 1985,²¹⁹ but mentioned that CSIS had released the materials to the RCMP for intelligence purposes and for purposes of applications for authorization to intercept private communications.²²⁰

SIRC concluded that there were “strains and stresses” between CSIS and the RCMP in late 1985,²²¹ but that investigative cooperation nonetheless continued until 1986 and beyond.²²² In a briefing to SIRC, the RCMP indicated that it understood CSIS’ concerns about the disclosure of its information.²²³ SIRC concluded from its review of the RCMP briefing that the RCMP maintained that cooperation with CSIS before and after the Air India bombing remained good and that the RCMP at no time alleged that the difficulties or delays relating to negotiations with CSIS seriously harmed the investigation.²²⁴

According to SIRC, while the delay in reaching agreement about the use of CSIS information by the RCMP could be considered excessive in light of the importance of the investigation, the agreement reached did resolve for the most part the concerns of both agencies.²²⁵ SIRC concluded that it was not possible, from the material available to it, to determine whether an immediate sense of frustration was building up for RCMP

²¹³ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 71.

²¹⁴ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 71.

²¹⁵ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at para. 71.

²¹⁶ *SIRC Air India Report*, p. 59-61.

²¹⁷ *SIRC Air India Report*, p.60.

²¹⁸ *SIRC Air India Report*, p. 59-60.

²¹⁹ *September 19, 1985 Affidavit* at para. 50.

²²⁰ *September 19, 1985 Affidavit* at para. 49.

²²¹ *SIRC Air India Report*, p.61. This, according to SIRC, was apparent from a letter from CSIS Director Morden to the Solicitor General dated October 15, 1987, discussing the 1985 negotiations: *SIRC Air India Report*, p.59-61.

²²² *SIRC Air India Report*, p. 61.

²²³ *SIRC Air India Report*, p. 63-64.

²²⁴ *SIRC Air India Report*, p. 64.

²²⁵ *SIRC Air India Report*, p. 56.

investigators at that time,²²⁶ but that cooperation in the form of exchange of information and mutual assistance continued at the operational level.²²⁷

According to SIRC, the most serious complaints and recriminations about cooperation related to the erasure of the Parmar tapes by CSIS and the use of CSIS information in court.²²⁸ A CSIS investigator also complained that the RCMP was conducting investigations on Sikh extremism unrelated to criminal investigations.²²⁹ However, in a subsequent telex to CSIS Headquarters, it was noted that this complaint was not intended to disrupt relations with the RCMP or to apply to the Air India investigation.²³⁰

The RCMP also apparently complained that CSIS did not pass on information quickly enough about the June 4th Duncan test blast and related Parmar conversations.²³¹ This contention remains controversial. In a 1986 memorandum, the CSIS Director General, Counter-Terrorism responded that CSIS had immediately reported the Duncan incident – at the time believing it to involve the discharge of a firearm – to the RCMP VIP Section, to the “E” Division National Crime Intelligence Section (NCIS), as well as to the Duncan RCMP General Investigation Section from which information about Reyat was obtained.²³² The Director General, Counter-Terrorism further indicated that on June 27, 1985, following the Air India bombing, CSIS recommended to the RCMP that the area be searched in the company of a member of the CSIS surveillance team and this was done.²³³ SIRC concluded that CSIS had advised the RCMP of the Duncan incident the day after it happened and had reported the essential aspects of the Parmar conversations by June 28, 1985. However, SIRC stated that, perhaps in part because of the lack of comprehensive analysis by CSIS, neither the RCMP nor CSIS itself could immediately appreciate the significance of the language used in the calls or of the noise heard on June 4th.²³⁴ The RCMP has indicated that its Duncan detachment was advised of the Duncan incident on June 5, 1985 and that CSIS then mentioned that a target they had under surveillance in connection with “radicals in the East Indian community” was seen with Reyat on a logging road and a gunshot was heard.²³⁵ The RCMP also stated that CSIS informed the Vancouver Police Department (VPD) of the Duncan incident on June 6, 1985, and that the VPD in turn reported the incident to the RCMP investigators who along with US authorities were to meet Sikh extremists in connection with the plot to assassinate Gandhi.²³⁶ The investigators did not discuss the Duncan incident specifically during the interviews in order to avoid compromising the CSIS investigation.²³⁷

²²⁶ *SIRC Air India Report*, p. 56.

²²⁷ *SIRC Air India Report*, p. 58.

²²⁸ *SIRC Air India Report*, p. 61.

²²⁹ *SIRC Air India Report*, p. 61-62.

²³⁰ *SIRC Air India Report*, p.62.

²³¹ *SIRC Air India Report*, p.61. See also *Memorandum to John Simms from J. S. Warren re: Air India Litigation*, July 16, 1986 in *Applicant’s Motion Record on Section 7 Charter Application, Volume VI, Tab 25 (Air India Media Release CD, Volume 2, May 30, 2003)* [hereafter the “Warren Memorandum”].

²³² *Warren Memorandum*, p.1.

²³³ *Warren Memorandum*, p.2.

²³⁴ *SIRC Air India Report*, p.61.

²³⁵ *Draft RCMP SIRC Briefing*, p.5.

²³⁶ *Draft RCMP SIRC Briefing*, p.5.

²³⁷ *Draft RCMP SIRC Briefing*, p.5.

In spite of apparent cooperation at the operational level, the Inspector General did note in May 1986 that CSIS employees from the BC Region had indicated that reciprocal suspicion and distrust existed between CSIS officers and their RCMP counterparts.²³⁸ SIRC was unable to ascertain whether the atmosphere of suspicion and distrust existed and affected cooperation in the weeks immediately following the Air India bombing.²³⁹ It did find, however, that CSIS officials from the BC Region exhibited a degree of dissatisfaction with the cooperation received from the RCMP, mentioning one RCMP member in particular as being very critical of CSIS.²⁴⁰ SIRC found that some CSIS employees were subjected to verbal abuse from RCMP members in other contexts, but was not able to determine whether this was related to the Air India investigation.²⁴¹ In 1986, the CSIS Director General, Counter-Terrorism indicated that while the RCMP had made no formal charge that CSIS failed to pass on relevant information before or after the Air India bombing, the RCMP had “suffered a certain amount of innuendo to flow around”, most of which could, according to the Director General, be attributed to “pique on the part of individuals” or an “unfounded suspicion” that important information was being held back by CSIS in order to protect sources, targets or methods of operation.²⁴²

SIRC concluded that many of the cooperation problems between CSIS and the RCMP resulted from personality conflicts between RCMP and CSIS officers both at the senior and junior level, but that there was no indication that these problems had any long-term effect on the investigation.²⁴³ It found that the perceived encroachments into the other agency’s area of responsibility were not indications of a serious problem affecting the progress of the investigation.²⁴⁴ Further, it found that there were no unreasonable delays or denial of information by CSIS, and that the negotiations it undertook and the conditions it placed on the use of its information were consistent with its mandate.²⁴⁵

e. Allegations of Foreign Interference in Canada

According to SIRC, it was common among Sikh extremists, both before and after the Air India bombing, to label rivals within the movement as agents of the Government of India.²⁴⁶ This tendency accelerated after the bombing and led to allegations that the Indian Government was behind it. Zuhair Kashmeri wrote a series of articles in the *Globe and Mail* alleging interference with the Sikh community by the Government of India and complicity on its part in the destruction of Air India Flight 182.²⁴⁷ In a book later

²³⁸ *SIRC Air India Report*, p.62.

²³⁹ *SIRC Air India Report*, p.62.

²⁴⁰ *SIRC Air India Report*, p.62.

²⁴¹ *SIRC Air India Report*, p.62.

²⁴² *Warren Memorandum*, p.3.

²⁴³ *SIRC Air India Report*, p.65.

²⁴⁴ *SIRC Air India Report*, p.65.

²⁴⁵ *SIRC Air India Report*, p.65.

²⁴⁶ *SIRC Air India Report*, p.113.

²⁴⁷ *SIRC Air India Report*, p.91.

published by Kashmeri,²⁴⁸ the Government of India and in particular its intelligence agency, the Research and Analysis Wing (RAW), were accused of complicity in the Air India bombing. Leaders in the Sikh community also made similar accusations.²⁴⁹ Kashmeri claimed that India's Aviation Minister announced that the Air India flight had been bombed by Sikh extremists even before the wreckage from the plane had been sighted and that 15 hours after the crash, Indian consular officials in Canada pointed to two Sikhs fleeing the FBI,²⁵⁰ apparently knowing their names when police investigators were just beginning to isolate names from computer records.²⁵¹ An Indian Consul General admitted that his wife and children had reserved seats on Air India Flight 182. These reservations were subsequently cancelled, but he explained they had double-booked seats and used the alternative booking.²⁵² In September 1985, a Hindu named Riyare Lal appeared on US television saying that RAW persuaded him to blow up the Air India plane.²⁵³

Kashmeri alleged that his theory regarding the involvement of the Indian intelligence service was supported by some members of the crash investigation team.²⁵⁴ On November 21, 1985, the RCMP publicly denied allegations that the Government of India was involved in the Air India bombing. The Indian Prime Minister and High Commissioner to Canada also denied the allegations.²⁵⁵ A former Joint Director of the Indian Intelligence Bureau, M.K. Dhar, has admitted that both the RAW and his organization were pursuing intelligence operations in Canada between 1983 and 1987,²⁵⁶ including attempts to infiltrate the Sikh community, though Mr. Dhar denied any involvement of the Indian Government in the Air India bombing.²⁵⁷ Mr. Dhar indicated that he transmitted intelligence to Canadian authorities during the Air India investigation and was asked for advice in 2000 respecting the upcoming Air India trial.²⁵⁸ He also confirmed that in 1987, all RAW agents occupying positions within the Indian diplomatic missions in Canada were asked to leave the country by the Canadian authorities.²⁵⁹

In September 1987, Kashmeri reported that a former RCMP drug informer who claimed to be a Government of India informant had warned the RCMP of an Air India crash

²⁴⁸ Kashmeri, Zuhair, and McAndrew, Brian. *Soft Target: How the Indian Intelligence Service Penetrated Canada* (Toronto: James Lorimer & Company, 1989).

²⁴⁹ *SIRC Air India Report*, p.92.

²⁵⁰ *SIRC Air India Report*, p.114.

²⁵¹ *SIRC Air India Report*, p.114.

²⁵² *SIRC Air India Report*, p.120.

²⁵³ *SIRC Air India Report*, p.112.

²⁵⁴ *SIRC Air India Report*, p.115.

²⁵⁵ *SIRC Air India Report*, p.117.

²⁵⁶ See, generally, Dhar, Maloy Krishna. *Open Secrets: India's Intelligence Unveiled*, (New Delhi: Manas Publications, 2005) p.288-308.

²⁵⁷ Kashmeri, Zuhair, and McAndrew, Brian. *Soft Target: How the Indian Intelligence Service Penetrated Canada*, 2nd ed. (Toronto: James Lorimer & Company, 2005) p.xvi.

²⁵⁸ Dhar, Maloy Krishna. *Open Secrets: India's Intelligence Unveiled*, (New Delhi: Manas Publications, 2005) p.304.

²⁵⁹ Dhar, Maloy Krishna. *Open Secrets: India's Intelligence Unveiled*, (New Delhi: Manas Publications, 2005) p.306-07; Kashmeri, Zuhair, and McAndrew, Brian. *Soft Target: How the Indian Intelligence Service Penetrated Canada*, 2nd ed. (Toronto: James Lorimer & Company, 2005) p.128.

shortly before the incident.²⁶⁰ The Solicitor General responded that the informer's tip was not specific and that the RCMP had terminated its involvement with him in 1986.²⁶¹ No credibility was attached to the informer's statements.

In 1992, the RCMP again indicated that it possessed no evidence to support the theory that the Government of India was involved in the Air India bombing.²⁶² SIRC concluded that the CSIS information it examined was insufficient to establish a conspiracy against Air India sponsored by foreign governments, in particular the Government of India.²⁶³

3. CSIS Instructions, Policies and Directives regarding the Processing and Retention of Recordings of Intercepted Private Communications

a. Written Instructions, Policies and Directives

In 1985, CSIS had not developed policies governing the handling of electronic interceptions. In fact it was not until 1989 that CSIS issued comprehensive policies²⁶⁴ which, according to SIRC, corrected many of the problems identified in the handling of the Parmar tapes.²⁶⁵ In 1985, CSIS employees relied on the general terms of the CSIS Act and on various policies and instructions developed earlier by the RCMP Security Service.²⁶⁶ The policies and instructions were contained in three main documents:²⁶⁷

- The Technical Aids Policy and Procedures Manual;
- The July 14, 1980 Ministerial Directive; and
- The April 5, 1984 Barr Memorandum.

i. The Technical Aids Policy and Procedures (TAPP) Manual

The RCMP operational manual entitled "Technical Aids Policy and Procedures"²⁶⁸ was the main component of the CSIS policy package on processing and retaining intercepted private communications.²⁶⁹ Issued in 1981, this manual was meant to establish policies and procedures for technical surveillance activities carried out by the RCMP Security Service.²⁷⁰ When CSIS was created, CSIS employees simply continued to rely on the Manual and CSIS Headquarters issued amendments intended to reflect the application of

²⁶⁰ *SIRC Air India Report*, p.114.

²⁶¹ *SIRC Air India Report*, p.114.

²⁶² *SIRC Air India Report*, p. 117-118.

²⁶³ *SIRC Air India Report*, p. 124-126. SIRC indicated that the available information either provided credible alternative explanations for the events which occurred prior to the crash, or was based on hearsay or otherwise untrustworthy sources, but SIRC did mention that CSIS should have pursued its inquiries further in one area: *SIRC Air India Report*, p. 128.

²⁶⁴ *SIRC Air India Report*, p.85. See p.86-88 for a summary of the 1989 policy.

²⁶⁵ *SIRC Air India Report*, p.88.

²⁶⁶ *SIRC Air India Report*, p.67.

²⁶⁷ *SIRC Air India Report*, p.67.

²⁶⁸ *SIRC Air India Report*, p.67.

²⁶⁹ *SIRC Air India Report*, p.68.

²⁷⁰ *SIRC Air India Report*, p.68.

the CSIS Act.²⁷¹ However, access to the Manual was limited to personnel responsible for the administration and operation of technical support and neither investigators nor Intelligence Monitors had access to the Manual for reference on an ongoing basis.²⁷² The TAPP Manual provided that, in general, tapes containing non-relevant communications should be erased without delay.²⁷³

Chapter 16 of the Manual²⁷⁴ established procedures for processing and reporting communications. Intelligence Monitors were responsible for processing and reporting intelligence contained in intercepted communications. Three types of communications were to be erased immediately once it was ascertained that they were not within the scope of the warrant: solicitor-client communications; communications of confidence; and communications involving persons other than the target (innocent third party conversations). Reporting on the contents of the communications was generally to be done by a summary on a “Secret” form (direct reporting) or, in special cases and by prior arrangement subject to local or Headquarters decisions, by reproducing the entire content or portions of the intelligence on a “Top Secret” form (verbatim reporting). Verbatim reporting was to be used where information critical to an ongoing operational case could not be conveyed in its true meaning through summarization. In such cases, the raw product was required to be retained until a decision about disposition was made by Headquarters. Perishable information of an operational nature was to be processed on an immediate basis, while information not requiring immediate handling could be submitted periodically in composite reports covering related information. The Manual required that Interceptor Technicians be briefed on the most immediate procedures for reporting perishable information.

Chapter 21²⁷⁵ of the TAPP Manual provided directions for the retention of tapes containing information of investigative value and for the destruction of innocent third party information. It recognized the need for a retention period to allow investigators to access the original tapes if necessary. Tapes were required to be retained at least ten working days after being listened to, and preferably ten working days after the transcriber or translator had submitted a report of the content. There was a maximum retention period for processed tapes of one month, after which tapes were to be erased. Intelligence Monitors and investigators were to safeguard indefinitely tapes containing communications that significantly incriminated a target in subversive activity. Master Evidentiary tapes had to be retained in accordance with the Evidentiary Recording Chapter. This became impossible to apply when CSIS discontinued providing the Regions with the necessary equipment for evidentiary taping.²⁷⁶ The TAPP Manual Chapter respecting Evidentiary Recording was rescinded in 1984 and not replaced following a policy decision of the CSIS transitional group.²⁷⁷

²⁷¹ *SIRC Air India Report*, p.68.

²⁷² *SIRC Air India Report*, p.68.

²⁷³ *SIRC Air India Report*, p.69.

²⁷⁴ See *SIRC Air India Report*, Annex E.

²⁷⁵ See *SIRC Air India Report*, Annex E.

²⁷⁶ See *infra*: The Barr Memorandum.

²⁷⁷ *SIRC Air India Report*, Annex F, p.2.

ii. The July 14, 1980 Ministerial Directive

An additional Ministerial Directive was contained in two letters between the Solicitor General and the Commissioner of the RCMP.²⁷⁸ In his letter dated July 14, 1980,²⁷⁹ responding to RCMP correspondence, the Solicitor General required retention of innocent third party intercepts only in relation to the preservation of Master Evidentiary Tapes; other non-target intercepts were to be destroyed. The Directive further recommended that a limit of one month be added to the policy set out in the Tape Retention Chapter of the TAPP Manual.

iii. The Barr Memorandum

In a one paragraph internal memorandum dated April 5, 1984,²⁸⁰ Archie Barr, then Director of Security Policy Development in the Security Intelligence Transitional Team,²⁸¹ stated that since the CSIS Act contained no provision for the collection of evidence, no such capacity would be provided for within CSIS facilities.

SIRC found that the Barr Memorandum had a major impact in eliminating from CSIS any ability to create recordings of intercepted private communications that could be used for evidentiary purposes and in removing the facilities necessary for the preservation and proper presentation of evidence.²⁸² This was a departure from the RCMP Security Service policy and made the application of the TAPP Manual directive for indefinite retention of specific material unclear.²⁸³

b. SIRC Assessment of Written Policies

According to SIRC, the CSIS policies outlined above were seriously deficient.²⁸⁴ They provided no clear criteria for tape retention; the compulsory retention period was not clearly defined; responsibility for retention decisions was not assigned; there were no procedures to account for the tapes or for the processing steps; nor was any consistent procedure for reporting on information found in the tapes instituted. Further, what little policy guidance existed was not made available to the CSIS employees involved and was consequently not known to most of them.²⁸⁵

The Barr memorandum discouraged the retention of audiotapes. SIRC found that not retaining audiotapes was consistent with the CSIS Act which established CSIS as a separate agency with no police responsibilities related to preserving evidence.²⁸⁶ The

²⁷⁸ *SIRC Air India Report*, p.67-68.

²⁷⁹ See *SIRC Air India Report*, Annex C.

²⁸⁰ *SIRC Air India Report*, Annex D.

²⁸¹ *SIRC Air India Report*, p.67.

²⁸² *SIRC Air India Report*, p.69. CSIS discontinued providing the Regions with the necessary equipment for evidentiary taping because of the Barr Memorandum: *SIRC Air India Report*, Annex F, p.2.

²⁸³ *SIRC Air India Report*, p.69.

²⁸⁴ *SIRC Air India Report*, p.89.

²⁸⁵ *SIRC Air India Report*, p.89.

²⁸⁶ *SIRC Air India Report*, p.89.

CSIS Act allowed for the retention of information for four classes of threats to national security, but TAPP Chapter 21 only allowed for retention of intercepted communications significantly incriminating a subject in subversive activity.²⁸⁷ SIRC suggested that the lack of definition of the terms “significantly incriminate” and “subversive activity” in Chapter 21 and the lack of explanation of their application in the context of the CSIS Act when the TAPP Manual was added to the CSIS policy package caused confusion since the initial policy directive was meant to refer to the definition of subversion in the former *Official Secrets Act*. The definition as incorporated in the CSIS Act was considerably narrower.²⁸⁸

c. The February Memorandum

SIRC uncovered a memorandum²⁸⁹ sent on February 18, 1985 by J.J. L. Jodoin, then Director General, Communications, Intelligence and Warrants, to regional offices that requested that passages found in intercepted communications from which incriminating inferences could be drawn should be both paraphrased and transcribed verbatim in a report and that the relevant tapes should be preserved for one year or until the renewal date for the warrant.²⁹⁰ The Memorandum asked all Regional Chiefs to notify personnel involved in the processing of electronic intercepts.²⁹¹ It appears that the purpose of these instructions was to provide a more comprehensive data base for Headquarters officials who would request the renewal of warrants. It also appears that this memorandum was drafted following a meeting at CSIS Headquarters attended by warrant coordinators and CSIS Senior Counsel to discuss problems resulting from the conversion of former *Official Secrets Act* warrants into CSIS Act warrants.²⁹²

SIRC concluded that unlike the Barr Memorandum, the February Memorandum was not given the weight of policy and was not followed in spite of having been sent to all CSIS Regions.²⁹³ In correspondence to the RCMP, CSIS explained that the February Memorandum was only meant as a suggestion to warrant coordinators and that it was not followed because it was not adopted as policy.²⁹⁴ Jodoin indicated to SIRC that his intent was to assist warrant coordinators in obtaining relevant factual information for preparing renewal affidavits and that he did not intend to formally amend the existing policy as he did not have the necessary authority.²⁹⁵ BC Region Director General Claxton, however, was of the view that Jodoin did have the authority to order him to comply with the February Memorandum.²⁹⁶ Jodoin noted that policy development and implementation

²⁸⁷ *SIRC Air India Report*, p.70.

²⁸⁸ *SIRC Air India Report*, p. 69-70.

²⁸⁹ *Memo to Regional Chiefs, Communications Intelligence from J.J. L. Jodoin, Director General, Communications, Intelligence & Warrants*, February 18, 1985, in *Applicant's Motion Record on Section 7 Charter Application, Volume III, Tab 51* (Air India Media Release CD, Volume 2, May 30, 2003).

²⁹⁰ *SIRC Air India Report*, p.71.

²⁹¹ *SIRC Air India Report*, p.71.

²⁹² *SIRC Air India Report*, p. 71 and 72.

²⁹³ *SIRC Air India Report*, p. 71-72.

²⁹⁴ *SIRC Air India Report*, p.72.

²⁹⁵ *SIRC Air India Report*, p.72.

²⁹⁶ *Claxton Transcript*, May 2, 2002, p.24.

was a time-consuming process involving consultation with many departments, a process in which he did not intend to engage.²⁹⁷ He also indicated that his division issued procedures to fill gaps in existing policies pending the development of CSIS policy, but that the Regions retained a degree of autonomy with respect to procedural matters. They could choose not to comply with changes suggested by Headquarters, and that was the case for this Memorandum.²⁹⁸

According to SIRC, the wording of the February Memorandum and the explicit request that the instructions be forwarded to all responsible personnel contradicts the notion that it was only meant as a suggestion.²⁹⁹ Had the Memorandum been complied with, it might have raised CSIS investigators' awareness about the option of retaining tapes. Additional Parmar tapes may have been retained as a result of the lower threshold set out in the February Memorandum.³⁰⁰

4. CSIS' erasure of its audio recordings of the wiretap of Talwinder Singh Parmar

a. Erasure of the tapes and CSIS explanations

Initially, when tapes were sent to Ottawa for translation, the Ottawa Region erased the tapes after they were processed,³⁰¹ but sent back 50 tapes the translator could not review. When the BC Region acquired translation ability and began to process the Parmar tapes itself, BC operators proceeded to erase processed tapes ten days after their recording date once they were marked as having been reviewed by both a transcriber and a translator.³⁰² Because the 50 tapes sent back by Ottawa were reviewed only by a Punjabi-speaking RCMP officer,³⁰³ they were not subsequently erased. They were considered not to have been assessed for their intelligence value, as they had not been reviewed by a CSIS employee.³⁰⁴

After the Air India bombing, CSIS made no special arrangements to retain the Parmar tapes because it had not understood that the RCMP requested such a procedure.³⁰⁵ Only the 50 Ottawa tapes, plus four tapes dated May 6 and 7, 1985, which had been kept for voice-print analysis, were ultimately retained from the approximately 210 tapes of pre-Air India bombing Parmar intercepts.³⁰⁶ Conversations recorded afterwards³⁰⁷ were

²⁹⁷ *SIRC Air India Report*, p.72.

²⁹⁸ *SIRC Air India Report*, p.72.

²⁹⁹ *SIRC Air India Report*, p.72.

³⁰⁰ *SIRC Air India Report*, p.73.

³⁰¹ *SIRC Air India Report*, p.74. According to SIRC, the tapes had been erased by June 6, 1985: *SIRC Air India Report*, p.75.

³⁰² *SIRC Air India Report*, pp. 75 and 79-80.

³⁰³ *SIRC Air India Report*, p.76.

³⁰⁴ *SIRC Air India Report*, p.76.

³⁰⁵ *SIRC Air India Report*, p. 75-76.

³⁰⁶ *SIRC Air India Report*, p. 67 and p. 75.

³⁰⁷ SIRC reports that the Director of CSIS indicated that Parmar communications were recorded between July 1985 and February 6, 1986 and that all tapes from this period were erased: *SIRC Air India Report*, p. 76-77.

erased and there was no documentation that traced their processing.³⁰⁸ As of September 19, 1985, when the RCMP submitted its affidavit to intercept the communications of Reyat, Parmar and others, CSIS was still routinely erasing the tapes it had collected.³⁰⁹

SIRC found that because of the lack of clarity and accessibility of the written policies governing the handling of electronic intercepts, CSIS employees who were engaged in the technical interception process relied heavily on oral instructions and accepted past practices.³¹⁰ As there was neither a policy or any written procedures respecting physical handling of tapes nor procedures for monitoring and processing tapes in 1985,³¹¹ each Region developed its own system.³¹² In the BC Region, Intelligence Monitors were responsible for handling the tapes.³¹³ They developed a system of coloured check marks on the tape reel to indicate completion of transcription and translation.³¹⁴ They then had the tapes erased within ten days of the recording date,³¹⁵ contrary to the TAPP Manual's requirement that tapes be preserved for a minimum of ten days after they were listened to.

A comparison of official CSIS policy with the oral instructions and practices during the 1984-1989 period³¹⁶ revealed that many CSIS employees, including regional senior officers, were not aware of CSIS policies on retention and destruction of intercepts and that individual CSIS employees held different views about the criteria for collection and retention of information, about the identity of the individuals responsible for making the determinations and about the proper procedure for making decisions respecting retention.³¹⁷ Policies respecting immediate erasure of privileged, confidential and third party communications were not applied.³¹⁸ It was believed by some that individuals involved in the processing of tapes could alert their supervisor if information was within retention criteria, while others indicated that retention for CSIS purposes could be achieved through retaining either a report, verbatim transcripts or translator's notes.³¹⁹ In fact, translators and transcribers did not set aside any tapes for indefinite retention but simply added the coloured check marks to indicate that processing was completed.³²⁰

In 1985, no CSIS transcriber, translator, investigator or supervisor involved in the Parmar investigation was able to provide a common definition of the terms "significantly incriminate" and "subversive activity",³²¹ the retention criteria in the TAPP Manual. No guidance was available from Headquarters to help the officers understand the applicable

³⁰⁸ *SIRC Air India Report*, p. 76-77.

³⁰⁹ *SIRC Air India Report*, p.55.

³¹⁰ *SIRC Air India Report*, p.70.

³¹¹ *SIRC Air India Report*, p.79.

³¹² *SIRC Air India Report*, p.70. It was believed that a BC Region Head was responsible for administering the local tape retention and erasure program: *SIRC Air India Report*, Annex F at p. 11.

³¹³ *SIRC Air India Report*, p.79.

³¹⁴ *SIRC Air India Report*, p. 71 and p.79.

³¹⁵ *SIRC Air India Report*, p. 79-80.

³¹⁶ *SIRC Air India Report*, Annex F.

³¹⁷ *SIRC Air India Report*, p.1-2 and 10-11. See also *SIRC Air India Report*, p.70.

³¹⁸ *SIRC Air India Report*, Annex F, p.4-8.

³¹⁹ *SIRC Air India Report*, p.4-5 and 10.

³²⁰ *SIRC Air India Report*, p. 4 and 6-8.

³²¹ *SIRC Air India Report*, p. 80-81.

criteria.³²² BC Region Director General Claxton has testified that he was not overly concerned with defining the terms used in the TAPP Manual, but intended to preserve Parmar intercepts if they contained information which could provide a substantive investigative lead to the RCMP or which was relevant to the investigation.³²³

No information found on the Parmar tapes was identified as fulfilling the tape retention criteria.³²⁴ No regional investigator or headquarters analyst or supervisor instructed that any Parmar tape be retained.³²⁵ No one specifically directed that the tapes be erased either,³²⁶ but the BC Intelligence Monitors simply continued with the routine erasure.

The CSIS Director General, Counter-Terrorism explained in 1987 that the personnel involved in processing the Parmar tapes should have been looking for information “that was clearly and unequivocally related to the planning or commission of a serious crime” or subject to a specific request for retention from the police.³²⁷ According to the Director General, the Parmar tapes contained no such information and no request for retention was received from police.³²⁸

In 1985, it was also not clear who was responsible for making decisions relating to tape retention within CSIS.³²⁹ The former Director General, Counter-Terrorism stated in 1987 that any investigator, analyst or supervisor could have requested retention of a tape.³³⁰ One of the BC investigators believed that he could not make decisions respecting tape retention, as such decisions belonged to the regional senior level.³³¹ In 1988, Headquarters indicated that the BC Region was in the best position to make decisions about tape retention in the Parmar case.³³² The BC Region was of the view that individuals involved in processing the tapes and reporting on their contents could notify the next level in the chain of command and that the Region could only delay erasure until a final retention decision was made at the senior level at Headquarters.³³³ According to SIRC, it was the investigators in the BC Region, who had access to the tapes, who were in the best position to determine whether they should be retained. But their responsibility in this respect was never formalized nor understood.³³⁴

According to SIRC, it was a combination of policies in Chapter 21 of TAPP and the Barr Memorandum, along with the inadequacy of the informal procedures developed to compensate for the deficiencies and lack of accessibility of the existing policies, that led

³²² *SIRC Air India Report*, p.81.

³²³ *Claxton Transcript*, April 30, 2002, p.25 and 53.

³²⁴ *SIRC Air India Report*, p.80.

³²⁵ *SIRC Air India Report*, pp. 80 and 82. See also *Claxton Transcript*, April 30, 2002, p.34.

³²⁶ *SIRC Air India Report*, p.82.

³²⁷ *SIRC Air India Report*, p.81.

³²⁸ *SIRC Air India Report*, p.81.

³²⁹ *SIRC Air India Report*, p. 80 and 81.

³³⁰ *SIRC Air India Report*, p.81.

³³¹ *SIRC Air India Report*, p.82.

³³² *SIRC Air India Report*, pp. 81-82.

³³³ *SIRC Air India Report*, p.82. See also *Claxton Transcript*, April 30, 2002, p.80.

³³⁴ *SIRC Air India Report*, p.82.

to the erasure of the Parmar tapes in 1985.³³⁵ In 2002, the Crown in the Air India prosecution conceded, after BC Region Director General Claxton was called and testified for several days, that the CSIS erasure of the Parmar intercepts for the period of March 27 to September 19, 1985, could be characterized as unacceptably negligent under the applicable jurisprudence and that a violation of the accused's *Charter* right to disclosure resulted.³³⁶ During the earlier trial of Reyat, Justice Paris had dismissed an application for a stay of proceedings on the ground of abuse of process.³³⁷ The erasure of the Parmar intercepts was invoked as one of the grounds for the motion, but Justice Paris concluded that there was no improper motive on CSIS' part and that the accused could not show that the erasure resulted in a denial of his right to full answer and defence.

b. CSIS records on processing of intercepts

The BC system did not provide accurate data respecting the chronology of the processing of specific tapes.³³⁸ No precise accounting of the processing of the Parmar tapes was kept.³³⁹ Various documents provided information about the number of tapes recorded each day, their review, transcription and translation. But the documents often did not provide information respecting the date of the processing, and there were discrepancies among the documents.³⁴⁰ During the weeks following the bombing, BC Director General Claxton was aware that many of the Parmar intercept tapes were backlogged and still awaiting translation, but he did not request an inventory of the Parmar tapes nor an accounting in relation to the tape erasure process.³⁴¹

SIRC indicated that CSIS had sometimes erased tapes in other cases without reviewing or transcribing them and that it was not possible to conclude with certainty that this did not happen with the Parmar tapes.³⁴² In particular, SIRC noted that in its sampling, there was a reference to a tape which was not translated because the translator could not find it.³⁴³ Further, in a 1996 affidavit, the RCMP noted three instances where B.C. Telephone Company records indicated that calls were made to and from the residence of Parmar during the period when communications were intercepted but that CSIS kept no record of the contents of these calls or even of their existence.³⁴⁴ Among these calls were two to the residence of Air India suspect Ajaib Singh Bagri in June 1985,³⁴⁵ one on June 22nd.

³³⁵ *SIRC Air India Report*, p. 69 and 127-128.

³³⁶ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 at para. 7.

³³⁷ *R. v. Reyat*, B.C. S.C. #CC8801195, March 13, 1991.

³³⁸ *SIRC Air India Report*, pp. 70-71.

³³⁹ *SIRC Air India Report*, pp. 76 and 77-78.

³⁴⁰ Transcriber and translator logs differed in part because some of the tapes which did not contain Punjabi conversations were not sent to translation.

³⁴¹ *Claxton Transcript*, May 1, 2002, p.23.

³⁴² *SIRC Air India Report*, p. 78 and 90.

³⁴³ *SIRC Air India Report*, p. 78 and 84-85.

³⁴⁴ *Clark-Marlow Affidavit* at para. 140, 219 and 341.

³⁴⁵ *Clark-Marlow Affidavit* at para. 219 and 341.

c. CSIS reports on content of intercepts

In 1985, the official CSIS policies on the use of direct or verbatim reporting and the immediate reporting of perishable information were not applied.³⁴⁶ Personnel involved in processing intercepts did not receive updated guidelines or briefings on reporting procedures. Instead, it was expected that investigators would instruct and brief translators and transcribers about the target and what constituted significant information to be reported.³⁴⁷

SIRC found that the documents prepared by CSIS on the content of the Parmar tapes were inconsistent in their reports of the information. Some of the reports produced by the translators and transcribers did not identify the number and dates of tapes under review and inconsistently used either verbatim copying or paraphrasing, often without identifying which method was used.³⁴⁸ As appears from an RCMP affidavit, on some occasions, including calls intercepted on June 21 and 22, 1985, the CSIS reports did not identify the time of the intercepted calls.³⁴⁹ Even though Parmar immediately became central to the Air India investigation, the CSIS BC Region did not have verbatim transcripts prepared of the intercepts for the weeks preceding the bombing, primarily, according to BC Director General Claxton, because of the limited availability of translators. They were already backlogged with the tapes and needed to continue reviewing current intercepts in case further plans were being made by the suspects.³⁵⁰ Because of the need for elaborate security clearance to ensure translators were not sympathetic to Sikh extremists or agents of the Indian Government, the process of hiring translators took many months and additional staff was not available before October 1985.³⁵¹

According to SIRC, the various individuals involved in processing the tapes apparently received different instructions concerning the type of information to be reported. The Ottawa translator followed standard procedure in looking for subversive, terrorist or criminal activities, meetings, arrangements or accommodations or other suspicious behaviour.³⁵² The BC Region transcriber who reviewed English content focussed on information relating to espionage, threats against individuals and other serious criminal or terrorist activities or plots.³⁵³ The BC Region translator was instructed orally to look for calls indicating planning, travels and meetings as well as conversations respecting criminal activity such as plans to attack individuals, cause explosions or destroy property.³⁵⁴

³⁴⁶ *SIRC Air India Report*, Annex F, p.4-8.

³⁴⁷ *SIRC Air India Report*, Annex, p.3-4.

³⁴⁸ *SIRC Air India Report*, p.84.

³⁴⁹ See *Clark-Marlow Affidavit* at para. 194, 295-301 and 317.

³⁵⁰ *Claxton Transcript*, May 1, 2002, p.10-11.

³⁵¹ *Claxton Transcript*, May 1, 2002, p.10-11.

³⁵² *SIRC Air India Report*, p.74.

³⁵³ *SIRC Air India Report*, p.74.

³⁵⁴ *SIRC Air India Report*, p.75.

According to CSIS BC Region Director General Claxton, the investigators in charge of the file were expected to converse with the translator and transcriber on a daily basis to keep them informed of the progress of the investigation and of the type of information to be reported.³⁵⁵ Translators were hired because of their knowledge of the language and were not expected to have an understanding of the information that could be significant or useful in terms of national security issues.³⁵⁶ They received no particular investigative training and had no police or CSIS background.³⁵⁷ There seemed to be no standards or format for uniform reporting of the information. In some cases, potentially relevant information such as travel plans was reported only in paraphrased form with many details missing.³⁵⁸

SIRC noted that the Parmar tapes were not the only case where information was not properly reported within CSIS.³⁵⁹ In a case involving an assassination attempt of an Indian Minister by Sikh extremists less than a year after the Air India bombing, it was found that policies and procedures for reporting information to Headquarters were outdated, badly drafted and inconsistent with the CSIS mandate and organization. Regional investigators and immediate supervisors did possess valuable intelligence that was not considered sufficiently important to be reported.³⁶⁰

5. Sharing of information between CSIS and the RCMP regarding CSIS wiretap audio recordings of Talwinder Singh Parmar

a. Sharing of information respecting interception and erasure

After the Air India bombing, Parmar quickly became the main suspect and was the most important target for both CSIS and the RCMP.³⁶¹ CSIS apparently did not inform the RCMP immediately that it had obtained a Federal Court warrant in March 1985 to intercept Parmar's communications.³⁶² According to the Rae Report, there are conflicting accounts of when CSIS advised the RCMP about the Parmar wiretaps and whether the RCMP requested CSIS to maintain the tapes from the Parmar intercepts.³⁶³

Though many of the Parmar tapes were not immediately processed,³⁶⁴ SIRC noted that two conversations were reported to CSIS Headquarters on June 24, 1985 and one conversation was reported to the RCMP on June 27 or 28.³⁶⁵ After the bombing, CSIS eventually allowed RCMP investigators to review translators' notes in relation to

³⁵⁵ *Claxton Transcript*, April 30, 2002, p.22 and 66.

³⁵⁶ *Claxton Transcript*, April 30, 2002, p.66.

³⁵⁷ *Claxton Transcript*, April 30, 2002, p.81 and May 1, 2002, p.73.

³⁵⁸ *SIRC Air India Report*, p.85.

³⁵⁹ *SIRC Air India Report*, p.85.

³⁶⁰ *SIRC Air India Report*, p. 85-86.

³⁶¹ *Claxton Transcript*, May 1, 2002, p.8. See also *SIRC Air India Report*, p.66.

³⁶² *Rae Report*, p.16.

³⁶³ *Rae Report*, p.16.

³⁶⁴ *SIRC Air India Report*, p.19.

³⁶⁵ *SIRC Air India Report*, p.26.

intercept tapes that had been processed.³⁶⁶ According to SIRC, senior officers of the RCMP and the CSIS BC Region met shortly after the Air India crash to coordinate their activities and the RCMP was then informed of the Parmar intercept warrant.³⁶⁷ The RCMP officer present at the meeting claims that he requested that CSIS retain all of the Parmar tapes it possessed and was collecting, while BC Region Director General Claxton, who did recall a conversation about the tapes, did not recall any specific request for their retention.³⁶⁸ The RCMP produced no formal minutes or written follow-up to the meeting.³⁶⁹ SIRC concluded that the RCMP's claim that it requested CSIS to retain the tapes "could not be substantiated".³⁷⁰ Crown prosecutor Jim Jardine indicated that he had asked that all tapes be retained as early as July 1, 1985.³⁷¹

BC Director General Claxton recalled that he told the RCMP that if any relevant information was obtained from the Parmar intercept in the period immediately following the bombing, he would take measures to isolate the tape, preserve it and immediately contact CSIS Headquarters' policy centre for instructions.³⁷² He then instructed a CSIS official to ensure that if relevant information was brought to his attention, he should hand the intercept over to the person responsible for the technical section. It was to be kept in his custody to ensure that continuity of possession for evidentiary purposes could later be demonstrated if necessary.³⁷³ He also stated that he advised CSIS Headquarters of his commitment to the RCMP and that he was advised that the policy issues involved would have to be examined by the Headquarters officials.³⁷⁴

During the following months, according to BC Director General Claxton, the issue of RCMP access to and use of CSIS information and intercepts became the subject of a vigorous policy debate within CSIS.³⁷⁵ There were numerous discussions with respect to the type of materials the RCMP could access and the CSIS position in that regard changed a number of times.³⁷⁶ BC Director General Claxton indicated that the constant Headquarters negotiations and the numerous changes of position were a source of frustration for CSIS personnel at the investigative level.³⁷⁷ BC Director General Claxton believed that the RCMP should be given access to the translator and transcriber notes for the Parmar intercepts, but policy directives from CSIS Headquarters at times contradicted this position.³⁷⁸

³⁶⁶ *SIRC Air India Report*, p.45.

³⁶⁷ *SIRC Air India Report*, p.75. BC Region Director testified that he informed RCMP members of the existence of the Parmar intercepts "very soon after the crash": *Claxton Transcripts*, April 30, 2002, p.37.

³⁶⁸ *SIRC Air India Report*, p.75. See also *Claxton Transcript*, April 30, 2002, p.35.

³⁶⁹ *SIRC Air India Report*, p.75.

³⁷⁰ *SIRC Air India Report*, p.90.

³⁷¹ *SIRC Air India Report*, p.53.

³⁷² *Claxton Transcript*, April 30, 2002, p.25 and May 1, 2002, p.27.

³⁷³ *Claxton Transcript*, April 30, 2002, p.27.

³⁷⁴ *Claxton Transcript*, May 1, 2002, p.25-26.

³⁷⁵ *Claxton Transcript*, May 1, 2002, p.25.

³⁷⁶ *Claxton Transcript*, May 1, 2002, p.62.

³⁷⁷ *Claxton Transcript*, May 2, 2002, p.7.

³⁷⁸ *Claxton Transcript*, May 1, 2002, p.59-60.

On August 23, 1985, the RCMP asked for details about some of the Parmar calls.³⁷⁹ It appears that the tapes at issue in this RCMP request had already been erased in July 1985.³⁸⁰ SIRC indicated that on September 18, 1985, during a meeting between CSIS and the RCMP, CSIS was informed that Crown Prosecutor Jardine wanted access to the CSIS intercepts to prepare wiretap authorization applications and for use as evidence if necessary.³⁸¹ The RCMP apparently indicated at the time that it disagreed with this proposed use of CSIS information and viewed the use of this information as limited to identifying investigative leads.³⁸²

In its September 19, 1985 affidavit, the RCMP noted the refusal by CSIS to provide copies of taped communications.³⁸³ On September 30, 1985, M.S. Sandhu, a Punjabi-speaking RCMP constable, was indoctrinated by CSIS and began translating the 50 Parmar tapes sent back by the Ottawa Region, recorded between April 9 and 24, 1985.³⁸⁴ There were no documents found by SIRC to explain why CSIS allowed the RCMP to review the tapes, but CSIS explained that this was not to obtain the assistance of the RCMP, but rather to allow the RCMP to determine, for criminal investigation purposes, whether the tapes contained material of evidentiary value.³⁸⁵

On October 25, 1985, for purposes of investigation, the RCMP requested a list of materials from CSIS, including copies of surveillance reports for Parmar up to June 30, 1985.³⁸⁶ This access was granted when a team of RCMP investigators began its review of the materials on CSIS premises starting on October 31, 1985.³⁸⁷

BC Director General Claxton indicated that he and other CSIS officials never considered making an order for the retention of the Parmar intercepts during this period of debates and negotiations about RCMP access to the tapes.³⁸⁸ The September 19 RCMP affidavit makes no mention of the tape erasure.³⁸⁹ BC Director General Claxton indicated that during his discussions with RCMP members respecting the Parmar intercepts, he did not inform them that the tapes were progressively being erased.³⁹⁰ Before Constable Sandhu was brought in to translate the tapes, RCMP officers had never been granted access to the Parmar intercept tapes themselves, but only to the CSIS notes respecting the intercepts.³⁹¹

³⁷⁹ *SIRC Air India Report*, p.53.

³⁸⁰ *SIRC Air India Report*, p.53.

³⁸¹ *SIRC Air India Report*, p.60.

³⁸² *SIRC Air India Report*, p.60.

³⁸³ *September 19, 1985 Affidavit* at para. 48. See also *SIRC Air India Report*, p.55.

³⁸⁴ *SIRC Air India Report*, pp. 59 and 76.

³⁸⁵ *SIRC Air India Report*, p.79. CSIS did in fact treat the tapes reviewed by the RCMP as unprocessed, though SIRC found no documents evidencing any further intelligence review of the tapes or their translation.

³⁸⁶ *SIRC Air India Report*, p.60.

³⁸⁷ *SIRC Air India Report*, p.60.

³⁸⁸ *Claxton Transcript*, May 1, 2002, p.12 and 17 and May 2, 2002, p.15 and 17.

³⁸⁹ See *September 19, 1985 Affidavit*.

³⁹⁰ *Claxton Transcript*, May 1, 2002, p.31 and 85.

³⁹¹ *Claxton Transcript*, May 1, 2002, p.83 and May 2, 2002, p.14.

In October 1985, the RCMP received information indicating that the Parmar tapes had been erased.³⁹²

SIRC found that on November 13, 1985, RCMP Headquarters asked CSIS to account for the Parmar tapes recorded after July 1985 and the CSIS BC Region replied that all of their tape holdings prior to November 4, 1985 had been destroyed in accordance with CSIS policy.³⁹³ The RCMP eventually interviewed the CSIS translators and transcribers involved in processing the Parmar tapes. The RCMP gained access to their logs, which were used along with its own translation of the 50 Ottawa tapes, to attempt to ascertain the content of the erased Parmar tapes.³⁹⁴

b. Content of Parmar intercepts

CSIS employees involved in processing the Parmar intercepts indicated that they contained no evidence or information of value to the Air India investigation.³⁹⁵ However, BC Region Director General Claxton later testified that if he had been provided with a more complete analysis of the Parmar intercepts for the weeks immediately preceding the bombing such as was found in RCMP affidavits, he would have concluded that some of the materials were relevant to the RCMP investigation and would have requested that they be preserved.³⁹⁶

In a 1996 application for authorization to intercept private communications in connection with the Air India investigation, the RCMP provided a detailed summary of the contents of all of the Parmar intercepts for March 28 to June 22, 1985.³⁹⁷ In 1985 applications, reference had already been made by the RCMP to the content of the Parmar intercepts.³⁹⁸ In particular, reference was made to conversations between Hardial Singh Johal and Parmar on June 19, 1985, shortly before and immediately after the call to book the Air India tickets.³⁹⁹ In the first conversation, Parmar asked Johal whether he “wrote the story.” Johal replied that he had not and Parmar suggested that he write it. In the second conversation, which occurred minutes after the Air India tickets were booked, with Johal’s former phone number left as contact information, Johal (who was also seen at the airport on the day the suitcases were checked in) told Parmar that he “wrote the story” and suggested that Parmar “come over and see it.” Shortly after, Parmar was observed by

³⁹² *Wall Notebook Index*, p.16, 85-10-15, reporting that a CSIS employee “alleges” that the tapes are erased.

³⁹³ *SIRC Air India Report*, p.76.

³⁹⁴ *SIRC Air India Report*, p.83. The Report does not specify the timing of this procedure, but it was most likely done in preparation for the 1990 Reyat trial.

³⁹⁵ *SIRC Air India Report*, p.83.

³⁹⁶ *Claxton Transcript*, May 1, 2002, p.88-89.

³⁹⁷ *Clark-Marlow Affidavit* at para. 31 to 322.

³⁹⁸ *September 19, 1985 Affidavit; Information to Obtain a Search Warrant*, appendix to *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731.

³⁹⁹ *Information to Obtain a Search Warrant* at para. 48-50, appendix to *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731. See also *Extension of Wiretap Affidavit* at para. 59(e) and 59(f) and *Clark-Marlow Affidavit* at para. 269 and 276.

CSIS leaving his home and driving in the general direction of Johal's house.⁴⁰⁰ A short time later, another call was made to CP Air to make changes to the reservations.⁴⁰¹ The RCMP members who swore the 1985 Information to Obtain and the 1996 Affidavit indicated that on the basis of these intercepted conversations, they believed that the reservations for the Air India tickets were made by Hardial Singh Johal and that Johal then informed Parmar of what he had done.⁴⁰²

On June 20, 1985, an unidentified man went to CP Air to pick up the tickets. The following day, Parmar telephoned Surjan Singh Gill and asked whether he had delivered "those papers". Gill confirmed that he had and Parmar instructed him to deliver "the clothes" to the same place.⁴⁰³ The RCMP concluded that the "papers" referred to the tickets and the "clothes" to the suitcases to be checked in on the flights.⁴⁰⁴ A few days before the tickets were picked up and paid for in cash, Parmar asked Surjan Singh Gill to convert a cheque into cash in the form of one hundred dollar bills.⁴⁰⁵ On June 22, 1985, shortly after the bags were checked in at the airport, Parmar asked Johal if he had "mailed the letters" and the two men agreed to meet in person to discuss the mailing of the "letters".⁴⁰⁶ Earlier on the same day, Parmar's brother Kulwarn called Parmar and asked "whether that work has been done yet."⁴⁰⁷ Parmar replied "not yet."⁴⁰⁸ In addition, conversations intercepted on June 6, 1985 respecting airline ticket reservations for a person visiting from Toronto⁴⁰⁹ were believed by the RCMP to be relevant to the identification of Mr. X, the person who accompanied Parmar and Reyat during the June 4th Duncan test blast.⁴¹⁰

The 54 preserved Parmar intercept tapes were eventually introduced in evidence at the trial of Malik and Bagri.⁴¹¹ Initially, the defence sought to introduce them, but ultimately both the prosecution and the defence sought to rely on the content of the intercepts to demonstrate association with Parmar or the lack thereof.⁴¹² The defence pointed to numerous conversations between Parmar and third parties that were either clearly

⁴⁰⁰ *Clark-Marlow Affidavit* at para. 278. See also Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.234.

⁴⁰¹ *Clark-Marlow Affidavit* at para. 279.

⁴⁰² *Information to Obtain a Search Warrant* at para. 51, appendix to *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731; *Clark-Marlow Affidavit* at para. 284.

⁴⁰³ *Clark-Marlow Affidavit* at para. 301. This conversation is also mentioned in *September 19, 1985 Affidavit* at para. 50(s).

⁴⁰⁴ *Clark-Marlow Affidavit* at para. 301. See also Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.235.

⁴⁰⁵ *Clark-Marlow Affidavit* at para. 228.

⁴⁰⁶ *Clark-Marlow Affidavit* at para. 318. This conversation is also mentioned in *September 19, 1985 Affidavit* at para. 50(u).

⁴⁰⁷ *Clark-Marlow Affidavit* at para. 307. This conversation is also mentioned in *September 19, 1985 Affidavit* at para. 50(t).

⁴⁰⁸ *Clark-Marlow Affidavit* at para. 307. This conversation is also mentioned in *September 19, 1985 Affidavit* at para. 50(t).

⁴⁰⁹ *Clark-Marlow Affidavit* at para. 196 and 199.

⁴¹⁰ *Clark-Marlow Affidavit* at para. 200.

⁴¹¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1155.

⁴¹² *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1155 and 1165.

suspicious or guarded.⁴¹³ Some of the calls appeared to relate to the planning of various actions to harm the Indian government, though none seemed directly related to the Air India conspiracy.⁴¹⁴

According to SIRC, the RCMP, having reviewed logs and preserved tapes, indicated that they “did not uncover significant criminal information”.⁴¹⁵ However, it appears that the RCMP had in fact indicated that it “does not know what the erased tapes contained” and that since no complete transcripts of the conversations were made, “no analysis can now be made to ascertain whether or not they contained further leads”.⁴¹⁶ It was only with respect to Constable Sandhu’s review of the 50 preserved tapes that the RCMP mentioned that it “did not uncover significant criminal information”.⁴¹⁷

The CSIS Director General, Counter-Terrorism, indicated in 1986 that an intelligence report referring to the conversation with Surjan Singh Gill about delivering papers and clothes and to the conversation with Kulwarn Parmar about whether the work had been done was forwarded to the RCMP on June 27 or 28, 1985.⁴¹⁸ He admitted that in retrospect, these conversations could be viewed as references to the Air India bombing, but noted that this conclusion was impossible to draw prior to the bombing with the information then available to CSIS.⁴¹⁹ In any event, according to the Director General, the RCMP had access to the intercept notes and had time to request that the relevant tapes be preserved since it obtained information about the conversations before the ten-day period from the intercept date had elapsed.⁴²⁰

The CSIS BC Region never undertook a comprehensive re-analysis of the pre-crash intercepts in light of the facts known after the bombing,⁴²¹ though it appears that Headquarters officers did analyse some of the Parmar intercepts,⁴²² and found that they contained coded words used by Sikh extremist targets.⁴²³ CSIS nevertheless indicated to SIRC that there was no reason to believe the relevant conversations discussed the planning of the Air India bombing.⁴²⁴ BC Director General Claxton was apparently not aware that this analysis was being performed by Headquarters.⁴²⁵ According to Salim Jiwa, CSIS’ coordinator for counter-terrorism stated in a 1989 memo that CSIS’ main problem after the Air India bombing was the “lack of trustworthy and reliable human sources able to elaborate and/or corroborate the mixed and questionable conversations of technical targets, most of whom were extremely security conscious”.⁴²⁶

⁴¹³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1168.

⁴¹⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1168.

⁴¹⁵ *SIRC Air India Report*, p.83.

⁴¹⁶ *Draft RCMP SIRC Briefing*, p.9.

⁴¹⁷ *Draft RCMP SIRC Briefing*, p.9.

⁴¹⁸ *Warren Memorandum*, p.2.

⁴¹⁹ *Warren Memorandum*, p.2.

⁴²⁰ *Warren Memorandum*, p.2-3.

⁴²¹ *Claxton Transcript*, May 1, 2002, p.62 and 88 and May 2, 2002, p.20-21.

⁴²² *Claxton Transcript*, May 1, 2002, p.64-67.

⁴²³ *SIRC Air India Report*, p.83.

⁴²⁴ *SIRC Air India Report*, p. 83-84.

⁴²⁵ *Claxton Transcript*, May 1, 2002, p.67 and 69.

⁴²⁶ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.237.

In the end, SIRC indicated that there was no basis to conclude that information critical to preventing or investigating the Air India bombing was lost as a result of the erasure of the Parmar tapes.⁴²⁷ The Rae Report noted, however, that the RCMP did not share this view, as was apparent from 1996 memos authored by then Inspector Gary Bass, who was in charge of the Air India Task Force.⁴²⁸ Further, it was noted that the erasure was problematic in light of the Supreme Court of Canada decision in *R. v. Stinchcombe*⁴²⁹ respecting Crown disclosure obligations and in light of the defence allegation in the trial of Malik and Bagri that the intercepts might have contained information exonerating the accused.⁴³⁰

6. CSIS sources as witnesses – Air India trial witness Ms. E.

a. CSIS and RCMP contacts with Ms. E.

When the RCMP was informed that CSIS had observed Parmar drop off an unidentified male at the house of a person identified at the trial of Malik and Bagri as “Ms. E”, they visited Ms. E. once in November and once in December 1985 and found out that the unidentified male was Ajaib Singh Bagri.⁴³¹ They also learned that Bagri had visited Ms. E. two weeks earlier, a fact that was apparently partly confirmed by surveillance conducted on Bagri.⁴³²

In September 1987, CSIS field officer William Laurie was employed in the counter-terrorism unit and was investigating the Khalistan movement and Sikh terrorism.⁴³³ He had come across Ms. E.’s name on a list of individuals who had donated money to the Babbar Khalsa and decided to interview her to gather intelligence and possibly recruit her as a source.⁴³⁴ He went to her home and asked to speak to her about her knowledge of the Sikh community. When the witness was initially reluctant, he explained the difference between his functions as a CSIS agent and police functions, emphasizing that he had no ability to compel attendance in court, that the witness could speak with him confidentially and that her information would be forwarded only to the government and not to the police.⁴³⁵ When the witness agreed to speak to him, Laurie asked her about the discussions concerning Air India within the Sikh community and mentioned the need to provide answers for the families of the victims.⁴³⁶ Ms. E. then revealed that Bagri had asked to borrow her car to drop off bags at the airport the night before the Air India

⁴²⁷ *SIRC Air India Report*, p.128.

⁴²⁸ *Rae Report*, p.16.

⁴²⁹ [1991] 3 S.C.R. 326.

⁴³⁰ *Rae Report*, pp.16-17.

⁴³¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 5.

⁴³² *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 974-75. It is unclear from the judgment whether the surveillance was conducted by the RCMP or by CSIS, but it was mentioned in an RCMP Continuation Report.

⁴³³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 976.

⁴³⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para.976.

⁴³⁵ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 13.

⁴³⁶ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 14 and 101.

bombing.⁴³⁷ Ms. E. was adamant that she would never assist the police or testify in court because of the danger she believed this would cause for herself and her children.⁴³⁸ Laurie testified that he avoided supplying information to Ms. E. because it would have been contrary to the intelligence gathering purpose of his visit.⁴³⁹ He also indicated that he was aware that Ms. E. had lost relatives in the Air India bombing and that he sometimes used this information as an emotional trigger when attempting to obtain information from her.⁴⁴⁰ Laurie interviewed the witness again on September 24 and October 7, 1987.⁴⁴¹ He had three additional interviews with her between October 1987 and April 1989.⁴⁴²

After agent Laurie rejoined the RCMP in 1990, he interviewed Ms. E. again with another RCMP officer in October 1990 to facilitate an introduction between the witness and the RCMP.⁴⁴³ During this interview, the difference between CSIS and the RCMP was again explained to the witness and Laurie told her that in spite of his past assurances, her information had been passed on the RCMP.⁴⁴⁴ The witness again expressed her unwillingness to testify, but allowed the interview to proceed. She was interviewed again in October 1990 by two RCMP members, but without Laurie.⁴⁴⁵ During that interview, she indicated that Laurie had told her that it was established through CSIS surveillance that Parmar had dropped off Bagri at her residence in June 1985.⁴⁴⁶ She also said that Laurie had “told everything” to her spouse. The RCMP Corporal in attendance became concerned about the independence of the witness’ recollections.⁴⁴⁷

In June 1991, Ms. E was approached by a different team of RCMP officers involved in source development for the Air India investigation.⁴⁴⁸ They were apparently unaware that the witness had been interviewed by RCMP members in 1990, but did know that Laurie had interviewed her and had provided “some information” to the RCMP.⁴⁴⁹ The officers interviewed the witness on several occasions in the spring of 1992 and she finally provided a written statement in May 1992.⁴⁵⁰ The RCMP interviewed the witness again in December 1996, videotaping the exchange without advising her.⁴⁵¹ In January 1997, they had her sign a brief written statement.⁴⁵² Ms. E. had four additional meetings with the RCMP between January 1997 and November 1998.⁴⁵³

⁴³⁷ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 14.

⁴³⁸ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 15 and 102.

⁴³⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 984.

⁴⁴⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 997.

⁴⁴¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 986 and 992.

⁴⁴² *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 6 and 19.

⁴⁴³ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 28.

⁴⁴⁴ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 30.

⁴⁴⁵ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 34.

⁴⁴⁶ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 36.

⁴⁴⁷ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 36.

⁴⁴⁸ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 39.

⁴⁴⁹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 39.

⁴⁵⁰ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 47.

⁴⁵¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 52-54.

⁴⁵² *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 10.

⁴⁵³ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 11.

At the Air India trial, Ms. E. claimed that she had no memory of the content of her previous statements to CSIS agent Laurie and the various RCMP officers.⁴⁵⁴ Three of her statements to Laurie were declared admissible for the truth of their content,⁴⁵⁵ but Justice Josephson later found that a reasonable doubt remained with respect to their ultimate reliability.⁴⁵⁶ A critical issue arising in this respect was that Ms. E. had indicated in her statements to Laurie that Bagri's visit occurred during the evening preceding the Air India explosion, but in her evidence at trial, she associated the visit with CSIS surveillance of which she was aware because the RCMP had questioned her in this respect.⁴⁵⁷ Since it was established that CSIS surveillance observed Bagri being dropped off at the witness' home on June 9 and not June 21, and since there was no mention in Ms. E.'s evidence or out-of-court statements of a second late-night visit by Bagri in June 1985,⁴⁵⁸ it was difficult to rely on her out-of-court statements respecting the timing of the visit.⁴⁵⁹

b. CSIS Reporting Procedures and the Destruction of Audiotapes, Transcripts and Handwritten Notes

CSIS agent Laurie indicated that during his interviews with Ms. E., he did not take notes in order to keep his exchanges with the witness as natural as possible.⁴⁶⁰ Immediately following his first interview on September 10, 1987, he made notes of the essential details, and when he returned to his office he prepared draft reports for CSIS.⁴⁶¹ The reports included all details Laurie considered intelligence, but did not attempt to track the witness' language, as they were prepared for intelligence, not evidentiary purposes.⁴⁶² He completed similar reports on the afternoons following his other interviews with Ms. E.⁴⁶³ In one such report relating to a January 1989 interview, he mentioned that Ms. E. told him that Bagri needed to borrow her car to go to the airport with "Bhai Sahib (Talwinder Singh Parmar) and an unidentified male".⁴⁶⁴ Laurie later admitted that this information may not have been provided by the witness but may rather have been a reflection of his own knowledge.⁴⁶⁵

Agent Laurie taped two of his six interviews with the witness and used transcripts of the interviews to assist in the preparation of his reports.⁴⁶⁶ He testified about his normal

⁴⁵⁴ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 12. Josephson J. found that her loss of memory was feigned: *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 64.

⁴⁵⁵ See generally *R. v. Malik and Bagri*, 2004 BCSC 299. See also *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 961.

⁴⁵⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1236.

⁴⁵⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1226.

⁴⁵⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1226-27.

⁴⁵⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1228-29.

⁴⁶⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 998; *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 25.

⁴⁶¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 25 and 26.

⁴⁶² *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 26.

⁴⁶³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 999.

⁴⁶⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1139.

⁴⁶⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1140.

⁴⁶⁶ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 27.

practice in gathering source intelligence,⁴⁶⁷ indicating that when he recorded an interview, he submitted the tape for transcription without listening to it.⁴⁶⁸ He did not recover the tape as it was erased after a transcript was prepared.⁴⁶⁹ He received one copy of the transcript, which was shredded after it was reviewed.⁴⁷⁰ He used the transcript in the preparation of his reports. The tapes and transcripts for the interviews with Ms. E. were accordingly destroyed and it was not subsequently possible to discern from Laurie's reports which of the interviews were recorded.⁴⁷¹ While Laurie testified that he recognized the evidentiary significance of Ms. E.'s information, he took no steps to preserve his notes, tapes and transcripts for the RCMP investigation,⁴⁷² but instead followed his normal practice.⁴⁷³

As a result, the only remaining record of Laurie's interviews with Ms. E. consisted of his intelligence reports. The reports contained no complete record of Laurie's interactions with Ms. E. during the interviews⁴⁷⁴ and no original notes, transcripts or tapes remained. Justice Josephson found that the destruction of these materials violated Bagri's *Charter* rights⁴⁷⁵ and that "C.S.I.S. appears to have failed at an institutional level to ensure that the earlier errors in the destruction of the Parmar tapes were not repeated".⁴⁷⁶ According to Justice Josephson, the destruction of these materials amounted to unacceptable negligence on the part of CSIS since "a procedure should have been in place for the preservation of this clearly relevant evidence for the criminal investigation",⁴⁷⁷ especially in light of the access agreement between CSIS and the RCMP in relation to the Air India investigation which was crystallized in early 1987,⁴⁷⁸ before Laurie's first interview with Ms. E. Justice Josephson also emphasized the fact that CSIS had never treated Ms. E. as a confidential informant but had passed her information and identity on to the RCMP.⁴⁷⁹

III. Other investigations relating to Sikh extremism

After the Air India bombing, CSIS and the RCMP also investigated other cases that were believed to involve Sikh extremists. The RCMP investigated cases relating to the Montreal and the Hamilton Plot and to the attempted murder of Tara Singh Hayer. Also, in its investigation of the shooting of Indian Cabinet Minister Sidhu, the RCMP relied in part on information previously obtained by CSIS.

⁴⁶⁷ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

⁴⁶⁸ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

⁴⁶⁹ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

⁴⁷⁰ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

⁴⁷¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1132 and 1231.

⁴⁷² *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 10.

⁴⁷³ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

⁴⁷⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1132 and 1231.

⁴⁷⁵ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 22.

⁴⁷⁶ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 19.

⁴⁷⁷ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 21.

⁴⁷⁸ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 4.

⁴⁷⁹ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 18.

1. The Montreal Plot

On May 30, 1986, five Babbar Khalsa members from Montreal were arrested on the grounds that they were conspiring to blow up an Air India Boeing 747 flying out of John F. Kennedy airport in New York.⁴⁸⁰ According to journalist Salim Jiwa, the arrests by the RCMP were based on the information of a source and a sting operation conducted with the help of an undercover FBI agent.⁴⁸¹ Charges against three of the accused were dropped, but the Crown proceeded with the prosecution of Santhokh Singh Khela and Kashmir Singh Dhillon, the remaining two accused.⁴⁸²

On December 23, 1986, Khela and Dhillon were found guilty and sentenced to life imprisonment. They appealed their convictions. The appeal was allowed and a new trial was ordered.⁴⁸³ One of the grounds for the appeal was the trial judge's refusal to order a police informer, identified only as "Billy Joe", to be produced and testify at trial. "Billy Joe" was a crucial contact person during the investigation by the undercover police officers. The Crown admitted that he was an informer, but objected to the disclosure of his identity and the content of his testimony. The Quebec Court of Appeal held that the identity of the police informer was not privileged and should have been disclosed.

Before the second trial in February 1992, counsel for Khela and Dhillon sought to interview "Billy Joe". They met a recalcitrant "Billy Joe" wearing a hood over his head and flanked by two large men who the Crown counsel identified only as not being police officers. Counsel for the defence doubted his identity and the interview could not proceed. The Crown did not provide the defence with the name, address or any other identifying features of "Billy Joe", nor did it provide disclosure of his proposed testimony.⁴⁸⁴

When the second trial opened on March 10, 1992, Khela and Dhillon brought *Charter* applications for a judicial stay of proceedings. The trial judge ordered a stay of proceedings.⁴⁸⁵ The Quebec Court of Appeal allowed the Crown's appeal, quashed the stay of proceedings and ordered a new trial on the original charges. The new trial judge would have to rule on the extent and timing of disclosure in relation to "Billy Joe's" evidence.⁴⁸⁶ On appeal, the Supreme Court of Canada held that the first judgment of the Quebec Court of Appeal was binding on the Crown and that the Crown should be afforded the opportunity to either comply with the terms of the judgment or move to vary it.⁴⁸⁷ The Supreme Court found that the Crown could meet its disclosure obligations either by disclosing the evidence of the informant and his full name and whereabouts or by producing "Billy Joe" and ensuring that he cooperated and answered all questions.⁴⁸⁸

⁴⁸⁰ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.182.

⁴⁸¹ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p. 182.

⁴⁸² Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.182.

⁴⁸³ *R. v. Khela* [1991] Q.J. No. 1608 (Q.C.A.).

⁴⁸⁴ *R. v. Khela* [1995] 4 S.C.R. 201 at para. 5.

⁴⁸⁵ *R. v. Khela* [1992] Q.J. No. 409 (Que. Sup. Ct.).

⁴⁸⁶ *R. v. Khela and Dhillon*, (1994) 92 C.C.C. (3d) 81 (Q.C.A.).

⁴⁸⁷ *R. v. Khela*, [1995] 4 S.C.R. 201.

⁴⁸⁸ *R. v. Khela*, [1995] 4 S.C.R. 201.

At the start of the third trial, a motion was brought by Khela and Dhillon to stay the proceedings, and a permanent stay of proceedings was granted.⁴⁸⁹ Justice Fraser Martin of the Quebec Superior Court held that the Crown breached its disclosure obligations by failing to communicate to the accused relevant information contained in “sealed packets” relating to authorizations to intercept the private communications of the accused and three others which were granted between April 10 and May 23, 1986. The Crown also failed to communicate to the defence, to the second trial judge, as well as to the Court of Appeal and Supreme Court who heard the appeal, the existence of “Billy Joe’s” statement reduced to writing. This statement was deemed to be of vital interest to the defence since it outlined the informant’s ongoing relationship with persons whom the RCMP suspected of being Sikh extremists.

The Quebec Court of Appeal dismissed the Crown’s appeal on May 26, 1998,⁴⁹⁰ holding that the case had reached a stage where serious prejudice to the accused, resulting from the Crown’s failure to disclose, could not be remedied.

2. The Hamilton Plot

On June 13, 1986, Talwinder Singh Parmar was arrested in Hamilton, Ontario. He faced conspiracy charges for his alleged involvement in a plot to blow up the Indian Parliament buildings and kidnap the children of Indian MPs. Also arrested were Ajaib Singh Bagri, Tejinder Singh Kaloe, Daljit Singh Deol, Surmukh Singh Lakhain, Sadhu Singh Thiara and Rampal Singh Dhillon.⁴⁹¹ On December 22, 1986 after a preliminary inquiry, five of the seven accused, including Mr. Parmar, were ordered to trial and two of the accused, Mr. Bagri and Mr. Dhillon, were discharged.⁴⁹²

According to author Salim Jiwa, the RCMP had in their possession incriminating wiretap evidence and believed that they had intervened just in time to stop the plot before members of the Babbar Khalsa could leave for India and carry out their plans.⁴⁹³ On March 10, 1987, Justice Watt allowed the accused access to the affidavits upon which the wiretap authorizations were obtained, after first reviewing and editing their content.⁴⁹⁴ The accused applied for an order further disclosing to them edited portions of the affidavits. The informants cited in the affidavits did not consent to this disclosure that would reveal their identities, and the Crown could not demonstrate the propriety of the issuance of the wiretap authorization without relying on the undisclosed material. Justice Watt set aside the authorization and the private communications intercepted, which constituted the primary evidence in the case, were accordingly ruled inadmissible. As a result, the accused were found not guilty.⁴⁹⁵

⁴⁸⁹ *R. v. Khela*, [1996] Q.J. No. 1940 (Que. Sup. Ct.).

⁴⁹⁰ *R. v. Khela* [1998] Q.J. No. 2035 (Q.C.A.).

⁴⁹¹ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.181.

⁴⁹² *R. v. Parmar* [1987] O.J. No. 203 (Ont. Sup. Ct.).

⁴⁹³ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.181.

⁴⁹⁴ *R. v. Parmar* [1987] O.J. No. 203 (Ont. Sup. Ct.).

⁴⁹⁵ *R. v. Parmar* [1987] O.J. No. 567 (Ont. Sup. Ct.).

3. The shooting of Indian Cabinet Minister Malkiat Singh Sidhu

Mr. Malkiat Singh Sidhu and his wife left India on May 16, 1986 to come to British Columbia to attend the wedding of their nephew. Mr. Sidhu had been appointed Minister of Planning for the state government of Punjab just prior to leaving for Canada.⁴⁹⁶ A few days after the wedding, Mr. and Mrs. Sidhu drove to Tahsis, BC with relatives.⁴⁹⁷ On May 25, 1986, the Sidhus and their relatives left Tahsis and, as they were driving, a black Pontiac cut off their vehicle. Two occupants of the Pontiac approached the car occupied by the Sidhus and smashed the front windshield, the back window and the two rear passenger windows. A third occupant exited the Pontiac and a fourth, while still in the car, fired five 32 calibre bullets through the broken windows of the Sidhu car. One bullet hit Mr. Sidhu's right arm and another his chest, remaining lodged between the spinal cord and the left lung. The assailants quickly returned to the Pontiac and sped away. A citizen came upon the Sidhu vehicle and radioed for an ambulance and police help. The Pontiac was found abandoned. The RCMP set up a roadblock and a Chevrolet van was stopped. The RCMP found Sukdial Singh Gill driving the van and three other men, Armajit Singh Dhindsa, Jasbir Singh Atwal and Jaspal Singh Atwal, lying on a mattress in the back.⁴⁹⁸

The four men were charged with attempted murder. Prior to the scheduled trial date, the Attorney General signed an indictment alleging one count of conspiracy to commit murder against nine accused, including the original four accused and five others, and a second count of attempted murder against the original four accused.⁴⁹⁹ On February 27, 1987, a jury found the original four accused guilty of the attempted murder of Mr. Sidhu. Appeals of their convictions were dismissed⁵⁰⁰ and their sentences of 20 years imprisonment were upheld.⁵⁰¹ Proceedings were stayed against the five other accused. The conspiracy charges collapsed because the affidavit behind the CSIS warrant authorizing the interception of private communications had to be withdrawn. The warrant application included information from a discredited source. Though the information was initially considered reliable, the BC regional office concluded, after the necessary documents had been sent to CSIS Headquarters in Ottawa, that the source could not be trusted, but failed to notify Headquarters.⁵⁰²

On August 17, 1987, the Federal Court of Appeal upheld the validity of section 21, the warrant-granting provision of the CSIS Act.⁵⁰³ Harjit Singh Atwal, one of the five accused of conspiracy, had applied for access to a sworn affidavit in support of a warrant application in Federal Court. On April 30, 1987, the Federal Court denied access to the

⁴⁹⁶ *R. v. Dhindsa* [1986] B.C.J. No. 1615 (B.C.S.C.).

⁴⁹⁷ *R. v. Atwal*, [1990] B.C.J. No. 1526 (B.C.C.A.).

⁴⁹⁸ *R. v. Dhindsa* [1986] B.C.J. No. 1615 (B.C.S.C.).

⁴⁹⁹ *R. v. Atwal* [1986] B.C.J. No. 728 (B.C.S.C.).

⁵⁰⁰ *R. v. Dhindsa* [1989] B.C.J. No. 2194 (B.C.C.A.).

⁵⁰¹ *R. v. Atwal* [1990] B.C.J. No. 1526 (B.C.C.A.).

⁵⁰² Security Intelligence Review Committee, *Annual Report 1987-1988* (Ottawa: Minister of Supply and Services Canada, 1987), p. 11 [hereafter the "*SIRC Annual Report 1987-1988*"].

⁵⁰³ *Atwal v. Canada* [1988] 1 F.C. 107 (F.C.A.).

affidavit.⁵⁰⁴ On appeal, it was ordered that access to the affidavit be allowed, with the names of CSIS agents and informants deleted.⁵⁰⁵

The “Atwal affair” led to the resignation of the first Director of CSIS, Ted Finn, on September 11, 1987 when it was revealed that the affidavits behind the warrant in the Atwal case contained inaccuracies and irregularities. He was replaced by J. Reid Morden.⁵⁰⁶

CSIS also came under public fire because of allegations that it failed to inform police in advance of the conspiracy. SIRC indicated that conversations recorded in the wiretap pointed clearly to a plan to assault the Indian Minister. However, CSIS did not review the material until the attempt had already been made.⁵⁰⁷ According to Salim Jiwa, CSIS discovered that part of the plot had been discussed almost twenty-four hours beforehand and intercepted the relevant conversations.⁵⁰⁸ These intercepts were handed over to the RCMP, which led to the conspiracy charges.

Malkiat Singh Sidhu was later shot and killed in April 1991 in the doorway of his own home by a gang of armed men. At the time, Mr. Sidhu was campaigning for re-election to the Punjab state legislature.⁵⁰⁹

4. The attempted murder of Tara Singh Hayer

Tara Singh Hayer was the editor of a British Columbia newspaper, The Indo-Canadian Times.⁵¹⁰ He was initially a strong supporter of the movement for an independent Khalistan and published on the subject throughout the 1980s.⁵¹¹ He eventually became a vocal opponent of Ajaib Singh Bagri and Talwinder Singh Parmar,⁵¹² taking issue with their management of the Babbar Khalsa and writing specifically about Bagri personally in unfavourable terms.⁵¹³ According to author Kim Bolan, this was because Hayer believed Bagri and Parmar were discrediting the Sikh separatist movement by advocating violence.⁵¹⁴

⁵⁰⁴ *Atwal v. Canada* [1987] 2 F.C. 309.

⁵⁰⁵ Rosen, Philip. “The Canadian Security Intelligence Service” (Ottawa: Parliamentary Information and Research Service, 2000); *Atwal v. Canada* [1987] 2 F.C. 309; *Atwal v. Canada* [1988] 1 F.C. 107 (F.C.A.).

⁵⁰⁶ Rosen, Philip. “The Canadian Security Intelligence Service” (Ottawa: Parliamentary Information and Research Service, 2000).

⁵⁰⁷ *SIRC Annual Report 1987-1988*, p.1.

⁵⁰⁸ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.174.

⁵⁰⁹ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.174.

⁵¹⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 6.

⁵¹¹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 6.

⁵¹² Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.77-78.

⁵¹³ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 6.

⁵¹⁴ Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.77-78.

On August 22, 1988, Hayer was shot three times at the offices of The Indo-Canadian Times by a young man named Harkirat Singh Bagga.⁵¹⁵ Hayer survived the attack, but became paraplegic.⁵¹⁶ Bagga was apprehended by the authorities. According to authors Salim Jiwa and Kim Bolan, he initially told the police that he had obtained the weapon used to shoot Hayer from Ajaib Singh Bagri.⁵¹⁷ Bagga eventually pled guilty to attempted murder⁵¹⁸ and denied the earlier allegation about Bagri, stating that he shot Hayer for personal reasons.⁵¹⁹ He was sentenced to imprisonment for ten years.⁵²⁰

On November 18, 1998, Tara Singh Hayer was killed by a person or persons who entered his home garage and shot and stabbed him while he was exiting his car.⁵²¹

During the Air India trial, the Crown attempted to introduce evidence implicating Bagri in the 1988 attempted murder of Hayer, on the basis of a theory that he sought to eliminate Hayer because he was capable of implicating him in the Air India bombing and had been publicly identifying him as one of the perpetrators of the Air India bombing.⁵²² Justice Josephson ruled that this evidence was not admissible.⁵²³

⁵¹⁵ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7.

⁵¹⁶ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7.

⁵¹⁷ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.189; Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.99.

⁵¹⁸ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7.

⁵¹⁹ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.173; Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.102.

⁵²⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7.

⁵²¹ Jiwa, Salim, *Margin of Terror* (Toronto: Key Porter Books, 2006) p.249; Bolan, Kim. *Loss of Faith: How the Air-India Bombers Got Away with Murder* (Toronto: McClelland & Stewart Ltd. 2005) p.181-82.

⁵²² *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 14-15.

⁵²³ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 58-60.